UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1992/32
16 January 1992

ENGLISH
Original: SPANISH

COMMISSION ON HUMAN RIGHTS
Forty-eighth session
Item 12 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Final report to the Commission on Human Rights on the situation of human rights in El Salvador, prepared by Mr. José Antonio Pastor Ridruejo, Special Representative of the Commission on Human Rights, in pursuance of the mandate conferred by Commission resolution 1991/75

CONTENTS

	Paragraphs	Page
INTRODUCTION	1 - 4	1
I. OVERALL POLITICAL SITUATION	5 - 33	1
II. ECONOMIC, SOCIAL AND CULTURAL RIGHTS	34 - 44	9
III. CIVIL AND POLITICAL RIGHTS	45 - 95	11
A. Summary executions	45 - 69	11
B. Arrests, abductions and disappearances ..	70 - 80	17
C. Treatment of political prisoners	81 - 85	21
D. Criminal justice	86 - 95	21

GE.92-10147/4237B

CONTENTS (continued)

		Paragraphs	Page
IV.	RESPECT FOR INTERNATIONAL HUMANITARIAN LAW IN ARMED CONFLICTS	96 - 117	24
V.	EFFORTS TO STRENGTHEN RESPECT FOR HUMAN RIGHTS AND THEIR RESULTS	118 - 123	31
VI.	CONCLUSIONS	124 - 139	32
VII.	RECOMMENDATIONS	140 - 143	34

I. INTRODUCTION

1. This report has been prepared pursuant to Commission on Human Rights resolution 1991/75 and Economic and Social Council decision 1991/257. It relates to the situation of human rights in El Salvador in 1991, although it must obviously be read in the light of the reports submitted by the Special Representative since 1981. The Special Representative is grateful for the cooperation extended to him in discharging his mandate by the Government of El Salvador and other Governments, by the Frente Farabundo Martí para la Liberación Nacional (FMLN), international and non-governmental organizations and other individuals and institutions.

2. By letter of 17 June 1991, the Special Representative told the Government of El Salvador that he would like to visit the country again between 21 and 29 September 1991. By letter of 4 July 1991, the Government granted permission for the visit to take place at that time.

3. During his stay in El Salvador, the Special Representative had an opportunity to meet with the Constitutional President of El Salvador, Mr. Alfredo Cristiani, with senior authorities and officials of other branches of government, and with chiefs and officers of the armed forces and security forces. At the headquarters of the Archdiocesan Legal Protection Office (Oficina de Tutela Legal del Arzobispado), he interviewed numerous witnesses brought forward by the latter and by other non-governmental humanitarian organizations and received extensive oral and written information from those organizations and from peasant and trade union movements. He held meetings with independent individuals and, lastly, visited Ilopango and La Esperanza (Mariona) prisons, where he was able to talk confidentially to political prisoners of various ideologies. The Special Representative also interviewed representatives of FMLN outside the country. Since writing his first report for the General Assembly, he has continued to receive copious information from all kinds of sources.

4. Through resolution 46/133 of 17 December 1991, the General Assembly thanked the Special Representative for his interim report (A/46/529, annex), endorsed the recommendations it contained, and decided, inter alia, to keep under consideration during its forty-seventh session the situation of human rights and fundamental freedoms in El Salvador, in the light of the course of events in that country.

II. OVERALL POLITICAL SITUATION

5. The armed conflict between the armed forces and FMLN continued in 1991, although not with the intensity of previous years. The negotiating process between the Government of the Republic of El Salvador and FMLN also continued, under the auspices of the Secretary-General of the United Nations. It should be recalled that the Secretary-General had intervened at the request of the Central American Presidents and within the framework of the good-offices mission entrusted to him by the Security Council in its resolution 637 (1989). The Secretary-General agreed to perform this task at the express request of the President of the Republic, Mr. Alfredo Cristiani,

and of the five Commanders of FMLN, in return for assurances by the parties that they would come to the negotiating table in good faith and with the genuine intention of achieving peace.

6. Under the Geneva Agreement of 4 April 1990, the current negotiating process has four objectives: to end the armed conflict by political means as speedily as possible; to promote the democratization of the country; to guarantee unrestricted respect for human rights; and to reunify Salvadorian society. 1/ The Geneva Agreement also offered political parties and other representative social organizations the possibility of participating in the process.

7. The timetable for the negotiating process was adopted in Caracas on 21 May 1990. Under that timetable, the process would take place in two phases. The first phase would be aimed at reaching a set of political agreements leading to a cease-fire and would cover the following topics: armed forces, human rights, judicial and electoral systems, constitutional reforms, economic and social issues, and United Nations verification of the agreements reached. The second phase would be devoted to establishing the necessary conditions and guarantees for reintegrating the members of FMLN into the civil, institutional and political life of the country.

8. The first meeting between the parties in 1991, which was the sixth in the round of negotiations taking place under the auspices of the Secretary-General, was held in Mexico City from 3 to 6 January. Despite the secrecy of the meeting, it became known that the issue of the armed forces had been discussed. 2/ This was the first meeting to be held after the launching of the FMLN military offensive on 20 November 1990.

9. On 4 January 1991, the Secretary of State of the United States of America, James A. Baker III, and the then Minister for Foreign Affairs of the Union of Soviet Socialist Republics, Eduard A. Shevardnadze, sent a joint letter to the Secretary-General in which they reiterated their strong support for his personal efforts to help negotiate a political settlement of the conflict in El Salvador in accordance with the Geneva and Caracas agreements. They also expressed their deep concern at the increase in violence in El Salvador and expressed the view that it was extremely important to achieve an agreement on a United Nations-supervised cease-fire prior to the legislative and municipal elections scheduled for 10 March 1991. In that connection, they expressed the hope that the legitimate interests of all political sectors would be respected, and that conditions would be created for their participation in the elections and also for the United Nations to monitor and observe those elections. As members of the Security Council, they said they were prepared to work with other members of the Council and interested States to ensure that any political agreements reached prior to a cease-fire would be fully respected and implemented. Lastly, they stated their belief that the personal participation of the Secretary-General was the key to finding a solution. 3/

10. The seventh round of negotiations and the second meeting in 1991 took place from 19 to 21 February 1991 at San José, Costa Rica. Subsequently, on 4 April 1991, the Secretary-General issued a statement marking the first anniversary of the launching of the negotiating process under his auspices.

He referred to the Agreement on Human Rights signed by the two parties on 26 July 1990 at San José, Costa Rica, and announced that he would be submitting a formal proposal to the Security Council for the establishment in El Salvador of the mission to verify the Agreement, as the initial component of an operation that he intended to call ONUSAL, which would be responsible for monitoring the various agreements that emerged from the negotiations. On the issue of the armed forces, he said that though no agreement had yet been struck, progress had been made. He also stated that the negotiating process had inspired a broad debate, involving all political parties and many social organizations and other institutions in El Salvador, on the spectrum of issues in the negotiations. He cautioned, however, against rising expectations of peace in the short term, given the scope and complexity of the issues under discussion.

11. A further round of negotiations took place in Mexico City from 4 to 27 April 1991. According to the Personal Representative of the Secretary-General to the negotiating process, the meeting produced significant and encouraging agreements. 4/ Those agreements concerned amendments to articles 77, 131, 162, 163, 168, 172, 174, 180, 182, 186, 188, 191, 192, 193, 208, 209, 211, 212, 213, 216 and 217 of the Constitution; the repeal of article 30; the insertion of a new article after article 193; and amendment of the heading of chapter VII of title VI of the Constitution. These articles concern the armed forces, the judicial and electoral systems and human rights. The most important provisions include the establishment of a National Civil Police for the maintenance of peace, law and order, and public safety, which will adhere strictly to respect for human rights and will be under the control of civilian authorities, independent of the armed forces and under the authority of a different ministry; creation of the post of a National Counsel for the Defence of Human Rights, who will be a member of the Public Prosecutor's Office and will be elected by a qualified majority of two thirds of deputies elected to the Legislative Assembly; allocation from the State budget to the Judiciary of resources amounting to no less than 6 per cent of current income; establishment of a Supreme Electoral Tribunal; and establishment of military jurisdiction as an exception to the unity of the system of justice and limited to the trial of purely military offences and misdemeanours. 5/

12. During the Mexico round of negotiations, agreement was also reached on the establishment of a Truth Commission, whose task it will be to investigate the serious acts of violence that have occurred since 1980, whose impact on society demands that the public should know the truth about the circumstances under which they took place. The Commission will be composed of three individuals appointed by the Secretary-General of the United Nations after consultation with the Parties and will submit a final report with its conclusions and recommendations within a period of six months after its establishment.

13. On 27 April 1991, FMLN issued a unilateral declaration in which it stated that the wording of article 211, where the armed forces were described as a "permanent" institution, was incompatible with its position on the matter. It also stated its view that there were constitutional reforms still awaiting negotiation, including demilitarization, article 105 on the limits on rural

land ownership, and the need to change the actual mechanism for reform of the Constitution, either by amending article 248 or by other procedures such as popular referendum.

14. On 28 April 1991, the President of the Republic submitted the Agreements on constitutional reform reached in Mexico to the Legislative and Constitutional Committee of the Legislative Assembly. The Legislative Assembly adopted the document submitted by the President. Nevertheless, for the amendments to enter into force, they must be ratified by two thirds of the deputies to the Legislative Assembly whose term began on 1 May and must be published in the Diario Oficial. The Legislative Assembly, however, introduced amendments to the provisions agreed on in Mexico concerning the Supreme Court of Justice and the composition of the Supreme Electoral Tribunal. 6/

15. A further round of negotiations began on 25 May 1991 in Caracas, Venezuela, and ended on 2 June 1991. Both Colonel Mauricio Ernesto Vargas, Deputy Chief of Staff of the Armed Forces, and FMLN Commander Shafik Handal stated that no major progress had been made. 7/

16. Representatives of the Government and of FMLN met for the tenth time at Querétaro, Mexico, from 16 to 23 June 1991. Previously, representatives of FMLN had held a meeting in Mexico City with representatives of the Inter-party Commission, which comprises the political parties represented in the Legislative Assembly, to make known the position of FMLN on the negotiating process. 8/ This dialogue marks increased participation in the negotiating process by the main Salvadorian political forces. The Querétaro round of negotiations apparently also ended without specific agreements being reached. The Personal Representative of the Secretary-General explained, however, that the negotiations were at a decisive stage in which it was difficult to reach partial agreements. 9/ The round was reportedly devoted to the items on reform of the armed forces, disarmament and demobilization of FMLN forces and cessation of military operations. 10/

17. The talks continued on 10 and 11 July 1991 in Mexico. Upon their conclusion, the Personal Representative of the Secretary-General stated that there had been "substantial progress, although nothing spectacular". 11/

18. It should be noted that at the conclusion of the tenth Summit of the Central American Presidents, which took place at San Salvador from 15 to 17 July 1991, a Declaration was issued by the Heads of State of the region in which they reiterated "their condemnation of acts of violence and terrorism, which have no justification whatsoever" and called, "for the good of Central America and with verification by the United Nations, for the disarmament and demobilization of the Frente Farabundo Martí para la Liberación Nacional, so that it may join ... in the civil, institutional and political life of El Salvador". 12/ The Central American Presidents, meeting later at Tegucigalpa, Honduras, on 12 and 13 December 1991, adopted the Tegucigalpa Declaration. In paragraph 6 of this Declaration, the Presidents expressed their hope that at the round of talks in New York it would be possible to sign the final agreement ending the armed conflict in El Salvador and that FMLN would join in the civil, institutional and political life of the country after

its disarmament and demobilization as an irregular armed group, in order that the Salvadorian people might be able to live in peace and tranquillity as they so greatly desired.

19. With a view to ending the impasse in the negotiating process, the Secretary-General of the United Nations invited the President of El Salvador and the Commanders of FMLN to meet with him at United Nations Headquarters in New York on 16 and 17 September. 13/ The meetings of both parties with the Secretary-General continued until 25 September, when the New York Agreement was signed. This Agreement was prompted by the need to give a final impetus to the negotiating process with a view to arriving, in the short term, at the set of political agreements required to put a definite end to the armed conflict. The New York Agreement establishes the National Commission for the Consolidation of Peace (COPAZ); provides for a process of purging and reduction of the armed forces and an agreement between the parties on redefining the doctrine of the armed forces; reaffirms the validity of the agreement reached in Mexico on 27 April 1991 concerning the training system for the armed forces; establishes the agenda for the negotiations on the new National Civil Police; sets forth some agreements reached on economic and social questions; and draws up an agenda for negotiations on pending items.

20. It should be noted that COPAZ, which will be a mechanism for civilian society to monitor and participate in the process of change resulting from the negotiations, will be responsible for overseeing the implementation of all the political agreements reached by the parties. COPAZ will be composed of two representatives of the Government, including a member of the armed forces, two representatives of FMLN, and one representative of each of the parties or coalitions represented in the Legislative Assembly. The Archbishop of San Salvador and a delegate of the United Nations Observer Mission in El Salvador (ONUSAL) will have access to the work and deliberations of COPAZ as observers. In the event of a difference of opinion as to whether a matter should be submitted to COPAZ, the question will be decided by the latter. COPAZ will have access to and may inspect any activity or site connected with the implementation of the peace agreements; it will have the power to prepare the preliminary legislative drafts necessary for the development of the agreements; it will have the power to issue conclusions and recommendations of any kind relating to the implementation of the peace agreements and to make them public; it will be authorized to address the relevant organs of the United Nations through the Secretary-General; and it will have the power to oversee the implementation of the agreements reached by the parties. In addition, the establishment of COPAZ will be explicitly endorsed in the resolution to be adopted by the Security Council concerning the peace agreements; the Secretary-General will keep the Security Council informed regarding the activities and effectiveness of COPAZ; and COPAZ will be endorsed by Governments which are in a position to support effectively the guarantee required under the agreements.

21. During the New York round of negotiations, agreement was likewise reached on the purging of the armed forces, based on the vetting of all personnel by an ad hoc commission. The armed forces will participate in this commission through two representatives, who will have access only to the deliberations of the commission. Furthermore, it was agreed that the parties should establish

the criteria for determining the size to which the armed forces are to be reduced in peacetime, and that the plan for the reduction of the armed forces (manner, timetable, budget, etc.) should be drawn up. In addition, agreement will be reached on the redefinition of the doctrine of the armed forces, on the understanding that the function of the armed forces is to defend the sovereignty of the State and the integrity of its territory, based on the principle that the activities and the regime of the armed forces are to be consistent with the rule of law, the primacy of the dignity of the human person and respect for human rights; the defence of and respect for the sovereignty of the people; the concept of the armed forces as an institution in the service of the nation, free from all considerations of politics, ideology or social standing, and from all other forms of discrimination; and the subordination of the armed forces to the constitutional authorities. The professional training of personnel serving in the armed forces will place emphasis on the pre-eminence of human dignity and democratic values, respect for human rights and the subordination of such forces to the constitutional authorities. The agreements reached in this area will also cover the admission and instruction systems.

22. With regard to the National Civil Police, the Agreement provides that the process of its establishment and organization should begin immediately, without awaiting other political agreements or the cessation of the armed conflict. The agenda for such negotiations will include its legal regime; doctrine; the enlistment of new personnel on the basis of a pluralistic and non-discriminatory selection and training system; profiles and training; the vetting of current National Police personnel, and the disbandment of the National Guard and the Treasury Police as public security forces. The organization of the National Civil Police and of the National Public Security Academy and the selection of their personnel will be the subject of close international cooperation and supervision.

23. With regard to economic and social questions, it was agreed that lands in excess of the constitutional limit of 245 hectares, as well as lands owned by the State which are not currently forest reserves, will be used to meet the needs of peasants and small farmers who are without land. To this end, the Government must try to purchase lands offered for sale to the State. Likewise, the current land-holding situation in conflict zones will be respected until a satisfactory definitive legal solution is arrived at, and the policies for granting loans to the agricultural sector will be revised. In addition, the parties agreed to refer to the phase of "compressed negotiations" the consideration of measures required to alleviate the social cost of structural adjustment programmes; the appropriate procedures for direct external cooperation in community assistance and development projects; and the establishment of a forum for economic and social consultation, with participation by the governmental, labour and business sectors.

24. The compressed negotiation phase began in Mexico City on 12 October 1991. In the course of the negotiations, it was agreed that questions of a political nature and those of a technical-military nature relating to the cease-fire should be taken up by two different bilateral commissions meeting separately. It was also apparently decided that the question of impunity should be kept

off the agenda and referred to the Truth Commission. 14/ On 21 October it was agreed that the negotiations should be suspended for consultations.

25. It should be noted that the Provisional Informal Committee of the National Commission for the Consolidation of Peace (COPAZ) was established on 10 October 1991 in Mexico City. At a second meeting held on 25 October, it began to draw up its rules of procedure and programme of work. Its meetings were attended by representatives of all political sectors participating in the Legislative Assembly.

26. On 31 October 1991, the Legislative Assembly unanimously ratified the constitutional reforms relating to the judicial and electoral systems and the question of human rights. After being published in the Diario Oficial, they were to enter into force on 30 November 1991.

27. The negotiations resumed on 4 November 1991 in Mexico City. They were suspended for two days on 9 November and continued from 11 to 17 November. After a further suspension, the negotiations continued from 25 November to 10 December in the town of San Miguel de Allende in Mexico. The principal topics addressed were the scaling-down of the armed forces, and the character, neutrality, admission requirements and training programmes of the new National Civil Police. However, only the Commission dealing with political questions met in San Miguel de Allende; matters relating to the cease-fire could not be taken up at the meeting on questions of a technical-military nature because of the lack of substantive progress.

28. On 2 December, the United States of America and the Soviet Union issued a joint statement calling on the parties to make the greatest possible effort to reach an internationally verifiable cease-fire agreement before the end of the year. 15/ The European Economic Community and the Heads of State of the members of the Rio Group also issued communiqués supporting the negotiation process.

29. On 10 December 1991, the Secretary-General, in conformity with the Mexico City Agreements of 27 April 1991 and after hearing the views of the parties, appointed Belisario Betancur, former President of Colombia, Thomas Buergenthal, President of the Inter-American Institute of Human Rights and former President of the Inter-American Court of Human Rights, and Reinaldo Figueredo, former Minister for Foreign Affairs of Venezuela, as members of the Truth Commission responsible for investigating the serious acts of violence which had occurred since 1980 and which, because of their impact on society, require that their nature and the circumstances in which they were perpetrated should become public knowledge. 16/ The Commission will be officially established on an appropriate date in 1992. 17/

30. On 6 December 1991, the Secretary-General suggested that the negotiations should be transferred to New York in order that he personally might be able to participate in them if necessary. 18/ Thus a new round of negotiations was held at United Nations Headquarters from 16 to 31 December and culminated in the conclusion of the New York Agreement, under which the parties declared that they had reached final agreements which, together with the earlier

agreements signed in San José, Mexico City and New York, completed the negotiations on all the substantive items on the Caracas Agenda and the compressed negotiations, and that the execution of the Agreement would put an end to the armed conflict in El Salvador once and for all. The parties further declared that agreement had been reached on all technical-military aspects of the separation and the cessation of the armed confrontation, which entailed the dismantling of the military structure of FMLN and the reintegration of its members into the civil, political and institutional life of the country, within a framework of complete legality.

31. The New York Agreement of 31 December 1991 also established that the cessation of the armed confrontation would formally begin on 1 February and end on 31 October 1992. It stipulated that 5 January 1992 had been set for a further meeting between the parties to negotiate the schedule for execution of the agreements and the procedure for dismantling the military structure of FMLN and reintegrating its members. It established that those negotiations should yield positive results not later than 10 January 1992, failing which the parties undertook to accept the formula the Secretary-General was to submit to them on outstanding questions not later than 14 January 1992. It further established that the Final Peace Agreements should be signed on 16 January 1992 in Mexico City. Lastly, the parties undertook to maintain the necessary atmosphere in which to continue to implement and elaborate the unilateral decisions they had taken in order to avert any military activity.

32. In talks with representatives of social sectors of various ideologies during his visit to El Salvador, the Special Rapporteur thought he detected in some of them a psychological predisposition to confrontation which was hardly, or not at all, in keeping with the objectives of peace and harmony underlying the agreements reached between the Government and FMLN. In this connection, the Special Representative believes that the sentiments of reconciliation and peace which are shared by the vast majority of the Salvadorian people have not yet penetrated the civil culture of some radicalized minority groups of opposing ideologies. This could hinder the full implementation of the agreements reached. Hence the need, in the Special Representative's view, for the Government and FMLN to make every effort to impart to all the country's social forces and sectors, including the most radicalized sectors, the noble objectives of the repeated agreements.

33. The Special Representative must mention that on 10 March 1991 general legislative and municipal elections were held in El Salvador. According to information from the Central Board of Elections, 53 per cent of registered voters took part in the electoral process. As a result of this process, the Legislative Assembly, consisting of 84 representatives, was formed as follows: Alianza Republicana Nacionalista (Nationalist Republican Alliance - ARENA), 39 seats; Partido Democrata Cristiano (Christian Democrat Party - PDC), 26 seats; Partido de Conciliación Nacional (National Conciliation Party - PCN), 9 seats; Convergencia Democrática (Democratic Convergence - CD), 8 seats; Unión Democrática Nacionalista (Nationalist Democratic Union - UDN), 1 seat; and Movimiento Auténtico Cristiano (Christian Authentic Movement - MAC), 1 seat. Acción Democrática (Democratic Action -AD) also took part in the electoral process but did not receive sufficient votes to win a seat.

II. ECONOMIC, SOCIAL AND CULTURAL RIGHTS

34. The Special Representative continued to receive many reports from various sources concerning harassment by the armed forces and the security forces directed against the activities of trade union, peasant and cooperative movements and inhabitants of resettled communities. Such harassment has allegedly extended on occasion to arrests, serious threats, mistreatment, torture and even disappearances and summary executions, matters which will be discussed in the appropriate section of this report. The following paragraphs contain selective and non-exhaustive information on the harassment in question.

35. On 27 February 1991, security forces allegedly attacked a demonstration by 6,000 trade unionists which was taking place in front of the Presidential Palace in San Salvador. It is also reported that between 12 and 18 March 1991, security forces carried out actions against striking public service workers, shooting and wounding 2 of them and arresting 15. 19/ Moreover, on 20 March 1991, members of the armed forces are said to have opened fire in Mejicanos, a neighbourhood on the outskirts of San Salvador, on ten members of the Comité de Desempleados y Despedidos de El Salvador (Committee of Unemployed and Dismissed Workers of El Salvador) while they were painting slogans calling for demilitarization of the country. Two of these people were allegedly wounded and five detained. 20/ A letter sent to the Special Representative by the Comité Cristiano Pro Desplazados de El Salvador (Christian Committee for Displaced Persons in El Salvador - CRIPDES) 21/ mentions the campaign of government harassment aimed at the eviction of communities and settlements of displaced, resettled and repatriated persons; this campaign allegedly involved deaths, serious injuries and arrests and the destruction of property. Many other sources have supplied information on these events. Priests from Chalatenango personally explained to the Special Representative the details of the harassment: serious threats, mistreatment arrests and the destruction of food, utensils and crops. The priests also referred to the fact that inhabitants of resettled areas have yet to be provided with papers, creating insecurity and preventing them from moving freely around the country.

36. The Special Representative also learned that five human rights activists (two Germans, a Spaniard, an Italian and an American) were arrested by members of the armed forces on 11 December 1991 in Usulután and were released two days later. 22/ On 19 November, armed men in plain clothes abducted the Lutheran pastor, José Palacios, who was released four days later. 23/

37. Having transmitted these complaints to the Salvadorian authorities, the Special Representative again received the explanation that the vast majority of Salvadorian trade union and peasant organizations have been infiltrated by FMLN and serve its political ends, namely, provocation and destabilization, a charge denied by the organization in question. Whatever the case, the Special Representative considers that government action must be in keeping with the Constitution and the law and must scrupulously respect human rights.

38. The Special Representative received extensive information in San Salvador about the fact that some popular organizations are encouraging, for purposes of destabilization, the forcible occupation of land belonging to others. Members of such organizations admitted to the Special Representative that this was true, claiming that such occupation was a "natural right" of the most dispossessed and complaining bitterly of the subsequent evictions. Officials of the Financiera Nacional de Tierras Agrícolas (FINATA) said that they had land available for peasants who applied for it according to the legal procedures. The President of the recently established Banco de Tierras said that his institution could finance the purchase of properties only if there was agreement between the parties concerned and could never finance the purchase of land taken over by force.

39. The Special Representative received information about FMLN attacks on the country's economic infrastructure, although such attacks are not as serious nor as frequent as in the years prior to 1990. A document dated 25 September 1991 from the Comisión Ejecutiva Hidroeléctrica del Río Lempa (CEL) reports that during the period between September 1990 and August 1991, there were 732 attacks on power lines and 7 attacks on power stations and substations. More specifically, FMLN sabotage left the central part of the country without electricity for an hour on 17 April 1991. 24/

40. A communiqué allegedly issued by FLMN on 17 August 1991 25/ also stated that a "punitive campaign" was being launched against building and financial firms. The campaign later took the form of the destruction of luxury housing in the Zacamil area.

41. According to published reports, on 20 October 1991, FMLN forces attacked the hydroelectric dams "Cinco de Noviembre", damaging two transformers, and "Quince de Septiembre". Two days later, FMLN blew up the Bailey bridge on the coast road and another bridge on the Pan-American Highway, near Jucuapa. 26/ The Director of the Comisión Ejecutiva Hidroeléctrica del Río Lempa (CEL) was obliged to announce that, if the sabotage continued, electricity rates would have to be raised. 27/

42. According to official information, during the last week of October 1991, FMLN commandos stopped buses from travelling between Perquin and San Francisco Gotera, forcing the population to travel long distances on foot. 28/

43. The Special Representative was able to read at San Salvador a letter on FMLN letterhead sent in September 1991 to the manager of a synthetics plant, which in highly literate terms "suggests" a "one-time contribution of $500,000 as war funds", under the threat of kidnapping. An FMLN representative, when shown this letter by the Special Representative, expressed surprise at the letterhead, which according to him was not the one currently used by the Front, and agreed to give additional information.

44. According to the local press, 29/ FMLN is extorting money from coffee producers as "war taxes". The same source 30/ reports that members of FMLN murdered a farmer, Rolando Aguilar, for not paying his "war tax".

III. CIVIL AND POLITICAL RIGHTS

A. Summary executions

45. In 1991, The Special Representative received extensive information from many sources on politically motivated summary executions, equivalent to murders, of non-combatants. As in previous reports, he wishes to draw attention to the difficulty of determining the exact number of such crimes, since they are not easy to investigate and the total figures differ according to source. He therefore advises extreme caution and circumspection in making an overall assessment of such incidents.

46. The figures reproduced below, with comparative tables for 1990, are those supplied by the Archdiocesan Legal Protection Office, and the Salvadorian Human Rights Commission (governmental) 31/ for summary executions attributed to members of the army, security forces and civil defence:

	Politically motivated summary executions of non-combatants attributed to members of the army, security forces and civil defence Source: Legal Protection		Civilian deaths attributed to members of the armed forces Source: Human Rights Commission (governmental)	
	1990	1991	1990	1991
January	1	2	6	8
February	7	4	2	5
March	6	3	7	10
April	4	4	2	5
May	7	6	4	5
June	9	16	7	4
July	8	4	10	7
August	3	2	4	9
September	5	5	7	7
October	1	6	1	3
November	1	2	5	2
December	5	0*	4	1*
Total	57	54	69	66

* Provisional data.

47. Apart from the figures reproduced above, the Special Representative received specific reports of summary executions, which are no doubt reflected in those figures. This specific information is given below, on the understanding that it is selective and not exhaustive.

48. When he introduced his previous report (E/CN.4/1991/34) to the Commission on Human Rights, the Special Representative mentioned the massacre committed during the night of 21-22 January 1991 at the village of El Zapote, in which 15 members of the Aragón family, ranging in age from 14 to 60, died. On that occasion the Special Representative was unable to give any indication as to who the perpetrators might have been or to assert that it was a politically motivated crime. It is important to mention now that in a document published in March 1991, 32/ Americas Watch states the following:

> "Although a question remains as to whether those implicated and detained were solely responsible for the [El Zapote] killings and not aided by others, a preliminary investigation by Americas Watch finds it plausible that the massacre may have been the result of a family feud without greater political motives. Major questions remain, however, as to exactly how a family feud resulted in a well-executed operation in which so many were killed. Moreover, the investigation by the Government, which never seriously considered the possibility of military involvement, and on occasion actually sought to dismiss it, needs to continue in order to clarify the possibility of further perpetrators".

49. The Special Representative heard testimony on 10 February 1991 alleging that Salvador Molina López, 17 years old and a member of the political coalition Convergencia Democrática, was summoned to work the night shift by Efraín Mazariega Torres, the manager of the Hornos de Cal quarries in the village of Chimalapa, El Panal canton, Metapán district, Department of Santa Ana. His family was opposed to his going, because both Mazariega Torres and Carlos Torres, members of the civil defence military escort in the village of Chimalapa, had earlier threatened to kill Convergencia Democrática activists. Molina López did go and was killed by Efraín Mazariega Torres, who threw the corpse into a ravine known as Casas Viejas. Mazariega Torres was arrested and confessed the killing before the First Court of the Peace of Metapán. However, he was later released. Recently both he and Carlos Torres are alleged to have threatened the father of the victim, saying that they would kill his other son, Víctor Manuel Molina López, and blow up his house with grenades if he went ahead with his court case and pressed his charges.

50. On 21 February 1991, a member of the civil defence is alleged to have shot young Félix Alberto Arévalo, 19 years old, wounding him seriously in the course of a forced recruitment sweep in the village of Cuscatancingo. 33/

51. According to the Human Rights Commission (non-governmental) of El Salvador, 34/ on 19 March 1991 troops of the armed forces shot at a group of civilians walking along the road from Chalatenango to Guarjila; an eight-year-old girl, Mária Teresa, was seriously wounded and died two days later.

52. A witness testified on 10 May 1991 that Víctor Méndez Cruz, a 24-year-old student of architecture, was bicycling with his girlfriend, Angélica María Castillo Paiz, a 20-year-old nursing student, along the Avenida Central in

Colonia Santa Emilia in San Miguel. Suddenly, a red Toyota Hiace van with tinted windows intercepted them. A man dressed in an olive-green military camouflage uniform, with military cap and boots stepped out of the vehicle and tried to force Angélica María Castillo Paiz to get into the van. Other women who appeared to be recent detainees are said to have been inside. Méndez Cruz tried to prevent his girlfriend from being kidnapped, whereupon the presumed soldier shot him several times with a G-3 rifle, killing him. He then shot the girl, seriously wounding her. The girl died the following day in a hospital in San Miguel. The spot where the double killing took place is situated within the security perimeter of the Arce Battalion barracks. During the wake for Méndez Cruz, detectives from the National Police of San Miguel searched the body and found a calendar from the political coalition Convergencia Democrática, in the deceased's wallet. This was presumably enough evidence for them to tell the family that Méndez Cruz was a guerrilla. The members of the family deny that Méndez Cruz had any political affiliation.

53. According to a witness interviewed personally by the Special Representative, on 21 June 1991, José Ernesto Sorto Luna, a captain in the self-styled Ejército Nacional para la Democracia (National Army for Democracy) which belongs to FMLN, went to visit his mother at her home in the village of Plan del Carbón in Los Abelines canton, Guatajiagua district, Department of Morazán. He went alone, unarmed and in civilian clothing. The next day, while he was sitting with a small son in the yard of the house, he was surprised by a group of approximately 30 soldiers from military post No. 4, who shot and fatally wounded him. The soldiers reportedly searched the body and took the money he had on him, a watch, a gold chain and even his false teeth, consisting of two gold crowns and a gold bridge. The soldiers then searched his mother's house for weapons. Not finding any, they left, threatening to kill the mother if she reported what had happened. According to eyewitnesses, the soldiers made no attempt to arrest the victim, but opened fire as soon as they saw him. The victim's mother, Francisca Sorto Argueta, says that four of her other sons have also been killed by the army.

54. According to the statement of a witness heard by the Special Representative at San Salvador, on 28 June 1991, Carlos Orlando Gallardo, a 32-year-old married merchant, boarded a bus in San Salvador in order to go to Suchitoto, where he lived. At the "Las Guaras" bridge in Suchitoto district, Department of Cuscatlán, the bus was stopped by a reserve unit of soldiers from military post No. 5, allegedly under the command of a Lieutenant Portillo. The soldiers ordered the passengers to get off the bus and form two lines, one of men and the other of women. Gallardo reportedly refused to line up and then refused to give his money to the corporal searching him, who insulted and struck him and reported the incident to the lieutenant. The lieutenant arrested Gallardo and ordered all the other passengers back on the bus, and told the driver to go on to Suchitoto. As the bus was pulling away, Gallardo reportedly ran towards it and was shot by the corporal. The lieutenant allegedly denied pleas by the driver and passengers to return to San Salvador with the wounded man, and ordered them to continue on to Suchitoto. At Suchitoto, the order was given to transport the wounded man to San Salvador, but he died on the way. The corporal is in prison, but the lieutenant is apparently at liberty. The bus passengers have said they are afraid to give evidence about the incident because they often have to pass the unit in question.

55. On 25 August 1991, members of the Salvadorian air force reportedly shot at José Dimas, an activist in the 16 de marzo community, while he was out walking with friends. Having wounded him in the leg, they then killed him. 35/

56. As in previous years, the Special Representative has received a great deal of information about summary executions and other politically motivated serious human rights violations attributable to the so-called "death squads". According to information sources, these squads have ties to, or are tolerated or protected by, members of the armed forces and security forces. In theory, this allegation seems plausible, although the Special Representative must point out that the circumstances in which the death squads operate do not exactly make it easy to investigate the actual incidents attributed to them. Furthermore, it certainly cannot be ruled out that their activities provide a cover for ordinary offences, as quite possibly in the case of the murder of Mr. Isaac Martínez, described below.

57. In any event, the Archdiocesan Legal Protection Office has supplied comparative figures for summary executions attributed to the "death squads" for 1991 and 1990, which are shown below side-by-side with figures provided by the Salvadorian Human Rights Commission (governmental) for civilian deaths as a result of actions by persons unknown.

	Politically motivated summary executions attributable to the so-called "death squads" Source: Legal Protection		Civilian deaths as a result of actions by persons unknown Source: Human Rights Commission
	1990	1991	1991
January	9	7	19
February	4	4	18
March	8	2	23
April	8	3	10
May	3	6	17
June	5	2	10
July	8	2	27
August	6	4	17
September	0	1	10
October	0	7	19
November	1	8	20
December	0	0*	6*
Total	52	47	196

* Provisional data

58. The following paragraphs describe some specific incidents attributed to the "death squads".

59. On 11 March 1991, the body of Isaac Martínez, who had been a Convergencia Democrática candidate in the latest elections, was found on a main road near Santa Ana. The body bore machete wounds and signs of torture. 36/ However, the judicial papers supplied to the Special Representative by the Salvadorian Human Rights Commission (governmental) indicated that Mr. Martínez had been the victim of a common crime committed by relatives.

60. On 19 May 1991, Gustavo Rosa Ramírez Aguilar was killed by shots fired into his home in the village of El Charcón, Department of La Libertad, in the presence of his wife and three children. Mr. Rosa was a displaced person and the circumstances of his death, including the fact that he had been detained by members of the National Police three weeks earlier, lead some local non-governmental organizations to believe that the crime was committed by persons with ties to government forces. 37/

61. On 8 July 1991, the brutally mutilated body of Martín Ayala Ramírez, a member of the Consejo de Comunidades Marginales (Council of Marginal Communities) was found in that organization's San Salvador offices. His wife, María Leticia Campos, was seriously wounded in the same attack. Local non-governmental organizations attributed the crimes to "death squads". 38/ On 6 August 1991, the alleged perpetrators of the crimes were shown on television by the Criminal Investigation Commission and allegedly stated that their motive had been robbery. This explanation did not convince the leaders of the Consejo de Communidades Marginales. 39/ The Special Representative was able to interview the alleged perpetrators in Salvadorian jails. The obvious contradictions in their statements would seem to indicate that it was not they who committed the crime.

62. According to testimony received by the Special Representative in El Salvador, at 7 p.m. on 3 August 1991, six men in civilian clothing abducted two young men who were murdered that night.

63. There are also reports of some organizations issuing written threats against persons suspected of belonging to FMLN and even against members of the United Nations Observer Mission in El Salvador (ONUSAL) and people working with them. 40/ In San Salvador, the Special Representative was able to see some of those threatening notes with his own eyes, especially the one sent to CRIPDES militant Mirtala López by the so-called Frente Anticommunista Salvadoreño (Salvadorian Anti-Communist Front). The Special Representative informed the Armed Forces General Staff of his concern at these threats. He was told that the matter was being investigated and that two alternative theories were being considered: that the threats were coming from an extreme left-wing or an extreme right-wing group. In addition, on 3 December 1991, members of the Asociación de Corresponsales de la Prensa Extranjera (Association of Foreign Press Correspondents) reported that the Frente Anticomunista Salvadoreño had threatened three foreign journalists. 41/

64. Bearing in mind the need for circumspection referred to earlier and taking into account all the information to which the Special Representative has had access, it can be concluded that the practice of summary executions by elements of the State apparatus, in particular by members of the armed forces and civil defence forces, persisted in the first eight months of 1991. The Special Representative notes, however, that the number of these violations is slightly lower than last year. This conclusion is borne out by absolutely reliable independent sources. In any event, as in 1990, the Special Representative is concerned at the atmosphere of intimidation against specific sectors of the population - particularly trade union members, peasants and inhabitants of resettled communities - who claim to be exposed to the worst reprisals.

65. The Special Representative also received a great deal of information about summary executions attributable to guerrilla organizations. According to Legal Protection and the Salvadorian Human Rights Commission (governmental), the figures are as follows:

	Summary executions attributable to guerilla organizations Source: Legal Protection		Civilian deaths as a result of terrorist acts Source: Human Rights Commission (governmental)	
	1990	1991	1990	1991
January	0	3	13	5
February	1	0	2	4
March	0	1	7	3
April	2	1	5	1
May	3	3	6	5
June	2	2	4	5
July	4	2	6	4
August	0	3	6	3
September	0	0	3	1
October	3	0	5	3
November	0	0	9	3
December	0	0*	12	2*
Total	15	15	78	39

* Provisional data.

66. The Special Representative also received specific information about summary executions, equivalent to murders, attributed to guerilla organizations. This information is summarized in the following paragraphs on a selective and non-exhaustive basis.

67. In an 11 April 1991 letter to the Special Representative, the Salvadorian Armed Forces General Staff attributed to FMLN commandos the summary execution on 22 March 1991 at Ahuachapán of the foreman of a farm. The Special Representative was unable to obtain any further information in El Salvador on the incident.

68. According to testimony heard by the Special Representative at San Salvador on 8 April 1991, Guillermo Hernández Rosales, a 27 year-old deserter from the armed forces Police Instruction Centre (CETIPOL), was abducted by members of the FMLN "modesto Ramírez" Central Front while on his way to the village of La Mora in El Zapote canton, Suchitoto district, Department of Cuscatlán. A member of the Front's northern Guazapa command, Tito Ruíz, reported that Hernández Rosales had been questioned about his activities and had confessed to being a zapador (infiltrated among the civilian population in conflict zones to inform the armed forces of guerilla movements). On 10 April, the northern Guajapa command ordered his execution by firing squad, which took place at Mango Mocho in San Antonio canton, Suchitoto district, Department of Usulután at 6 p.m. that day.

69. FMLN has also threatened individuals with summary execution. The Special Representative received news of serious threats by FMLN against certain mayors. Specifically, he was able to read a letter sent to the mayor of a town in the Department of Usulután warning the mayor that if he did not resign, he would be exposing himself to reprisals. 42/ According to the same source, nine mayor's offices of 16 towns in the Department of Usulután were operating in exile because of serious threats by FMLN, and several towns in the department did not enjoy the basic services of a mayor's office.

B. Arrests, abductions and disappearances

70. Non-governmental organizations in San Salvador told the Special Representative that political arrests had continued during 1991. A number of witnesses also said they had been arrested, although in most cases they had been released within 72 hours. Such arrests undoubtedly occur, but the Special Representative again recognizes that the Salvadorian authorities have the authority to arrest people who commit acts of violence against the constitutional order, provided the arrest and subsequent legal proceedings are in keeping with constitutional standards and with the international human rights obligations assumed by the Republic of El Salvador.

71. The Human Rights Commission (governmental) of El Salvador gives the following figures for arrests:

Arrests attributable to the army, security forces and civil defence (1991)

Source: Human Rights Commission (governmental)

	Persons registered as prisoners	Persons sentenced	Persons handed over to other institutions a/	Persons released
January	102	25	8	69
February	56	17	5	34
March	24	4	0	20
April	64	8	5	51
May	107	27	5	75
June	100	30	2	68
July	86	10	2	74
August	33	5	2	26
September	78	26	7	45
October	78	10	1	67
November	74	21	1	52
December b/	24	1	6	17
Total	826	184	44	598

a/ Directorate-General for Migration, municipal authorities, psychiatric hospitals, etc.

b/ Provisional data.

72. Legal protection provides the following statistics:

Arrests attributable to the army, security forces and civil defence

Source: Legal Protection

	Persons arrested and not released		Persons arrested and currently in detention		Persons arrested who subsequently disappeared	
	1990	1991	1990	1991	1990	1991
January	68	17	50	14	18	3
February	65	10	54	9	11	1
March	38	13	29	9	9	4
April	38	21	23	14	15	7
May	34	31	18	24	16	7
June	34	31	30	30	4	1
July	34	13	28	13	6	0
August	5	23	4	18	1	5
September	8	15	5	11	3	4
October	13	15	11	12	2	3
November	15	17	12	15	3	2
December	3	3*	3	2*	0	1*
Total	355	209	267	171	88	38

* Provisional data.

73. Legal Protection also reports that, in the course of 1991, 166 people were arrested and subsequently released.

74. With regard to enforced or involuntary disappearances, the Legal Protection Office provides the following figures for 1991, with the corresponding figures for 1990:

Enforced or involuntary disappearances

Source: Legal Protection

	Disappearances		Disappearances following arrest by the army, security forces or civil defence		Disappearances following abduction or forcible recruitment by guerrilla organizations		Disappearances in which the circumstances or culprits are unknown	
	1990	1991	1990	1991	1990	1991	1990	1991
January	31	11	18	3	3	1	10	7
February	19	14	11	1	0	2	8	11
March	20	11	9	4	0	1	11	6
April	21	12	15	7	0	1	6	4
May	27	15	16	7	1	2	10	6
June	14	8	4	1	2	1	8	6
July	14	7	6	0	1	1	7	6
August	4	18	1	5	0	0	3	13
September	6	12	3	4	1	2	2	6
October	9	11	2	3	0	0	7	8
November	12	8	3	2	2	1	7	5
December	4	1*	0	1*	2	0*	2	0*
Total	181	128	88	38	12	12	81	78

* Provisional data.

75. People have also been abducted and forcibly recruited by guerrilla organizations. The following figures are provided by Legal Protection and the Human Rights Commission (governmental):

Persons abducted or forcibly recruited by guerrilla organizations

	Source: Legal Protection						Source: Human Rights Commission (governmental)	
	Total (Legal Protection)		Abductions by guerrilla organizations		Forcible recruitment by guerrilla organizations		Civilians abducted by the FMLN	
	1990	1991	1990	1991	1990	1991	1990	1991
January	3	1	3	1	0	0	31	4
February	0	2	0	2	0	0	5	7
March	0	1	0	1	0	0	8	2
April	0	1	0	1	0	0	25	6
May	1	2	1	2	0	0	3	11
June	2	1	2	1	0	0	10	1
July	7	1	1	1	6	0	1	2
August	0	0	0	0	0	0	1	4
September	1	2	1	0	0	2	23	72
October	0	1	0	0	0	1	2	6
November	2	1	2	0	0	1	34	15
December	2	0*	2	0*	0	0*	6	1*
Total	18	13	12	9	6	4	149	131

* Provisional figures.

76. Legal Protection also reports that, in 1991, three other persons were abducted by guerrilla organizations and then released. According to the same source, the guerrillas took three persons as prisoners of war.

77. According to information provided by the Human Rights Commission (governmental) of El Salvador, on 18 June 1991 FMLN abducted Army Second Lieutenant Pedro A. Hernández Pérez while he was on leave and demanded a ransom fo. his release. After payment of the ransom by his parents, the Second Lieutenant was released on 8 September 1991.

78. Salvadorian businessman Gregorio Zelaya was abducted at the end of July 1991. In a statement issued on 5 August, FMLN claimed responsibility for the abduction, 43/ accusing Zelaya of not paying war taxes and of organizing "death squads". FMLN released him on 23 August. 44/ The Special Representative learned in San Salvador that Zelaya had been released after the payment of a ransom in six instalments.

79. According to Government information, a Second Sergeant and a corporal carrying away the bodies of two dead soldiers were abducted by members of FMLN in October 1991. 45/

80. Lastly, the Special Representative received information from numerous sources that FMLN is continuing the practice of forcible recruitment, even among juveniles of both sexes.

C. Treatment of political prisoners

81. The Human Rights Commission (non-governmental) of El Salvador sent a document to the Special Representative, 46/ containing a list of cases of torture of political prisoners during the first four months of 1991. The list included 34 cases, all attributed to elements of the State apparatus.

82. During his visit to the country, the Special Representative questioned a fairly broad sample of former or current political prisoners. Prisoners belonging to organizations all made roughly the same complaints as in 1990: very long interrogations while kept blindfold and unable to sit down or relieve themselves, many beatings, occasional use of a hood which impedes breathing and causes fainting, immersion of the head in tanks of water, electric shocks, and threats against them or their families. According to some accounts, the torture was designed to elicit public admissions of guilt for crimes the victims had not committed. Witnesses who did not belong to organizations complained only of intense interrogations while kept blindfold.

83. The Special Representative has to admit that, owing to the number and nature of the witnesses he was able to question in person, he cannot establish precisely what percentage were subjected to torture or cruel, inhuman or degrading treatment. The practice clearly persists but, in his opinion, is not an institutionalized policy; whether or not a detainee is tortured depends on a number of contingent factors, such as the value of the information he may give, the military situation of the conflict, the identity of his captors, etc.

84. During his visit to the "la Esperanza" (Mariona) prison, the Special Representative was able to witness for himself the overcrowded conditions and alarming insecurity in which prisoners were living. It is not infrequent for prisoners to die at the hands of fellow inmates.

85. According to various sources and testimony heard directly by the Special Representative, at about 8 p.m. on 17 June 1991 members of FMLN attacked the Mariona prison, the largest in the country, releasing and arming 35 political prisoners and breaking open cells occupied by ordinary prisoners. During the escape, a skirmish occurred between prison guards and guerrillas and resulted in the deaths of three prisoners inside and six outside the prison. According to testimony received by the Special Representative, another prisoner apparently died the following day as a result of shots fired by prison guards during incidents which took place inside the prison.

D. Criminal justice

86. In the reports he has been submitting since 1981, the Special Representative has repeatedly voiced his concern at the unsatisfactory functioning of the Salvadorian criminal justice system as a whole, although he

has acknowledged the difficulties that exist in this respect and the commendable professional and independent attitude of some judicial bodies. This attitude is not enough, however, to bring the overall situation of the criminal justice system up to the standards set forth in the current Constitution and in the international human rights instruments binding on the Republic of El Salvador.

87. With regard to 1991, the Special Representative must first mention the fact that a public trial was held in the case involving the murder of six Jesuit priests and two other persons on 16 November 1989. The trial began on Thursday, 26 September 1991 and ended on the evening of Saturday, 28 September, when the jury, consisting of five Salvadorian citizens, delivered a verdict finding Colonel Benavides guilty of all the murders and Lieutenant Mendoza guilty of the murder of the 15 year-old girl, Celina Ramos. The jury declared that it was not fully convinced of the guilt of the remaining defendants, all members of the armed forces, despite the existence of confessions admitting their involvement. Whatever the moral verdict on this surprising acquittal - in which the excuse that those concerned were only obeying orders seems to have played a part - the importance of the fact that an army colonel and lieutenant have been convicted of human rights violations should not be overlooked. The verdict sets a significant precedent whose importance should not be underestimated, given the current situation of criminal justice in El Salvador. However, the Special Representative shares with many sectors of local and international public opinion, especially local and international non-governmental humanitarian organizations, the justified misgivings that others may have planned the murders. It has to be asked whether a decision so fraught with consequences of every kind as the decision to murder the Jesuit priests could have been taken solely by a colonel who, by all accounts, was well known for his deep sense of duty and strict obedience to orders.

88. In short, although the outcome of the trial for the murder of the Jesuit priests is a landmark in the recent history of criminal justice in El Salvador, it does not go far enough. The Special Representative considers that the judicial investigation should continue in order to determine once and for all whether others were behind the crime and, if so, to bring them to justice. In this regard, it is public knowledge that, in a new report, United States Congressman Joe Moakley said in November 1991 it was quite possible that high-ranking members of the Salvadorian armed forces not involved in the criminal proceedings had issued orders for the Jesuit priests to be killed. 47/ The Government of El Salvador and the persons referred to categorically denied any part in the crime. 48/49/

89. Again, on 9 October 1991 a jury in Sonsonate acquitted 13 Civil Defence members charged with killing seven people in the district of Armenia on 30 July 1981. 50/

90. The Special Representative has also learned that on 12 October 1991 a jury found Jorge Alberto Miranda Arévalo guilty of the murder

on 23 October 1987 of Herbert Anaya, then director of the Human Rights Commission (non-governmental) of El Salvador. One member of the Commission, however, said that Miranda was innocent and that the killing had been the work of members of the security forces. 51/

91. With regard to the proceedings for the mass execution of peasants at San Sebastián on 21 September 1988, the competent authorities informed the Special Representative that an army major is implicated and that preparations are complete for a public trial to be held shortly before a jury, a trial set to follow the proceedings for the murder of the Jesuit priests and other persons. Apparently, on 5 December 1991 a Salvadorian judge dismissed the proceedings in connection with the army major, although the dismissal still has to be confirmed by the Supreme Court. 52/

92. The Attorney-General 53/ also informed the Special Representative that pre-trial proceedings are under way in the case of the mass killings in El Zapote canton on 21 January 1991, and that a number of persons have been arrested as the instigators and perpetrators of the crime. The Attorney-General also referred to the criminal proceedings being brought for the killing of two American advisers on 2 January 1991, after the helicopter in which they were flying was shot down by FMLN forces. Proceedings are being brought against members of the guerrilla movement, the alleged murderers.

93. While stressing the undoubted value of the developments recorded in the preceding paragraphs, the Special Representative feels bound to note the lack of progress in the criminal proceedings brought for many other serious human rights violations committed in El Salvador. No progress whatsoever has been made in the proceedings for the assassination of Monsignor Romero, the Archbishop of San Salvador, in March 1980, the mass killing of FENASTRAS trade unionists in October 1989 or the many other human rights violations mentioned by the Special Representative in the reports he has been submitting since 1981 at the request of the Commission on Human Rights.

94. Consequently, although there have been some significant developments in 1991 in the functioning of the Salvadorian criminal justice system, overall progress remains very inadequate. However, as in 1990, the Special Representative wishes to point out that shortcomings and deficiencies are much more prevalent in the investigation of the facts - currently done not by the judiciary but by the Criminal Investigation Commission, which answers to the executive branch - than in the actual judicial activity of juries, judges and courts. The latter have to pass sentence on the basis of facts established in the investigation, and the Special Representative considers that it is this stage of the proceedings which is in many cases highly questionable. The Special Representative therefore feels bound to urge the consitutional authorities of El Salvador to undertake the planned transfer of the Criminal Investigation Commission to the Attorney-General's Office as soon as possible, although his own view is that the ideal solution would be to hand over the investigation of facts to the judiciary.

95. Lastly, the Special Representative wishes to refer to the data transmitted by the President of the Supreme Court on the gradual improvement

in the functioning of Salvadorian criminal justice. For example, public hearings now end in failure only in 30 per cent of cases rather than 75 per cent; the number of convictions has increased (80 up to September 1991); and the number of those imprisoned without charge has dropped from 93 per cent to 78 per cent thanks to the enactment and enforcement of the law of 21 April 1991. 54/

IV. RESPECT FOR INTERNATIONAL HUMANITARIAN LAW IN ARMED CONFLICTS

96. According to information in the weekly bulletins of the Legal Protection Office, the number of persons killed by the army in military actions, without it being possible to determine how many were civilians and how many were guerrillas, is as follows:

Persons killed by the army in military actions, ambushes, clashes and patrols, it being impossible to determine the number of civilians and the number of guerrillas for lack of investigation in situ

Source: Legal Protection

	1990	1991
January	134	40
February	84	26
March	75	93
April	37	78
May	54	42
June	69	43
July	50	120
August	63	63
September	62	35
October	20	48
November	77	32
December	87	5*
Total	812	625

* Provisional data.

97. For its part, the Human Rights Commission (governmental) gives the following figures on civilians killed in clashes between the armed forces and the guerrillas:

Civilian deaths as a result of clashes between the armed forces and FMLN (1991)

Source: Human Rights Commission (governmental)

January	0
February	0
March	0
April	1
May	0
June	17
July	1
August	0
September	0
October	1
November	0
December	0*
Total	20

* Provisional data.

98. Legal Protection claims that the following civilian deaths were caused by explosive devices planted by the army:

Civilian deaths as a result of explosive devices planted by the army

Source: Legal Protection

	1990	1991
January	0	0
February	0	0
March	0	2
April	0	1
May	0	0
June	0	0
July	0	0
August	0	0
September	1	0
October	0	2
November	1	0
December	0	0*
Total	2	5

* Provisional data.

99. As in previous years, the Special Representative received specific information on armed forces operations that allegedly claimed civilian victims in the conflict zones and caused damage to property and crops. Thus, on 16 April 1991, it is claimed that the army targeted the population of the resettled communities of San José Las Flores, San Antonio Los Ranchos, Guarjila and Arcatao, threatening people, seizing and torturing some of them and destroying their goods and crops, always on the pretext that the people in the area were helping the FMLN guerrillas. 55/ Some witnesses interviewed in El Salvador by the Special Representative confirmed the story. Other witnesses spoke of harassment followed by threats, destruction of goods and crops and arrests by the armed forces on 17 and 18 August in the resettled village of Segundo Montes in order to intimidate the local people by charging that they were helping the guerrillas. The Special Representative also heard testimony to the effect that on 4 September 1991 the army had opened fire from a hill near the resettled village of San José Las Flores, causing the death of a nine-month-old child and wounding other villagers. All the witnesses involved were asked by the Special Representative whether, at the time the shots were fired, there were FMLN forces among them; he was told that there were none. ONUSAL believes that there is no convincing evidence that FMLN was in fact in the community at the time of the events of 17 and 18 August. ONUSAL was unable to determine whether FMLN elements were or were not present in the community when the events of 4 September in San José Las Flores occurred. 56/

100. According to a statement from a witness interviewed personally by the Special Representative in San Salvador, on 8 April 1991 the armed forces launched an attack near the village of El Planón, in the Department of Usulután. The gunfire was accompanied by air strikes and one of the bombs killed the wife and a daughter of the witness, as well as wounding him and some of his other children. According to the witness, FMLN was very nearby, although neither he nor his family had anything to do with the guerrillas.

101. The Special Representative expressed his concern about the information in the preceding paragraphs to the Defence Minister and the Armed Forces General Staff. With respect to the death of the nine-month-old child in San José Las Flores, he was told that she could not have been killed by an army bullet because the army's small arms did not have the range required to hit the village from the position occupied - the hill called "La Bola". The officers added that in all the cases mentioned, FMLN was present and that the villages in question were being used by the guerrillas as supply bases or rest camps.

102. The Special Representative was also told that food and medicine sent by humanitarian organizations to villages in the conflict zones are often intercepted by the armed forces on the pretext that FMLN is getting those shipments.

103. The Special Representative learned that on 15 October 1991 the inhabitants of Tenancingo, Department of Cuscatlán, claimed that, some days earlier, members of the armed forces had committed such acts as destroying harvests and searching houses, going so far as to charge people with cooperating with the guerrillas and holding them under temporary arrest. 57/

104. The Special Representative also received information from FMLN about alleged executions of wounded combatants by members of the armed forces. FMLN claimed that on 11 April 1991 one of its units, commanded by Antonio Cardenal, had been ambushed by the army; Cardenal, seriously wounded, had tried to escape, and during the chase he had been shot again several times and had died of his wounds. A different version of this event was given by the Armed Forces General Staff to the Special Representative: Cardenal, they claimed, had been fatally wounded in the chase that followed the ambush. FMLN further claimed that on 3 July 1991 one of its units was again ambushed by the army seriously wounding the guerrillas known as Turcio and Mira, who were allegedly later executed. The General Staff, however, claims that both guerrillas were killed in combat. Given the difficulty of investigating such events, the Special Representative regrets that he cannot reach any more precise conclusion about these charges. However, he would remind both parties of the absolute necessity for them to comply with the rules of international humanitarian law, which require respect for the life and physical integrity of wounded combatants.

105. Given the difficulties encountered in investigating the facts reported, and taking into account all the information to which he has had access, the Special Representative remains convinced that the life of the civilian population in conflict zones is painfully hard and that both sides - the armed forces and FMLN - should do their utmost to spare the people the harmful consequences of their conflict. The Special Representative also considers that in its war against FMLN, the armed forces have killed and injured civilians - not deliberately and indiscriminately but accidentally and occasionally. The difficulties of his investigation make it impossible to determine precisely how many such cases there have been, although in his opinion the figure is lower than in 1990. The armed forces also cause damage to public and private property, although it is difficult after a bloody battle to determine which of the opposing forces, the army or the guerrillas, is responsible for the damage.

106. As regards the civilian victims of guerrilla military action, the Archdiocesan legal Protection Office and the Human Rights Commission (governmental) provide the following figures for persons killed by explosive devices planted by the guerrilla forces.

Civilian deaths caused by contact with explosive devices planted by the guerrillas

	Source: Legal Protection		Source: Human Rights Commission (governmental)	
	1990	1991	1990	1991
January	0	0	6	3
February	0	2	1	3
March	0	0	2	1
April	0	2	2	1
May	1	1	7	4
June	1	3	3	4
July	1	0	3	2
August	0	0	3	2
September	0	0	2	1
October	1	0	2	1
November	0	0	7	1
December	0	0*	5	2*
Total	4	8	43	25

* Provisional data.

107. Legal Protection has supplied the following figures on civilian deaths caused by contact with explosive devices planted by persons unknown:

Civilian deaths caused by contact with explosive devices planted by persons unknown

Source: Legal Protection

	1990	1991
January	4	0
February	0	0
March	0	1
April	2	1
May	0	0
June	3	0
July	1	2
August	1	0
September	1	0
October	0	3
November	0	0
December	0	0*
Total	12	7

* Provisional data.

108. The Salvadorian Human Rights Commission (governmental) gives the following figures for civilians injured by contact with explosive devices planted by FMLN organizations:

	1990	1991
January	14	5
February	17	17
March	22	10
April	16	19
May	11	26
June	25	16
July	11	15
August	22	19
September	10	2
October	11	2
November	57	12
December	27	2*
Total	243	145

* Provisional data.

109. In his report to the Commission on Human Rights in 1991, the Special Representative reported the murder, in the first few days of 1991, of two United States military advisers after FMLN forces shot down the helicopter in which they were flying. 58/ A communiqué from the Frente to the Special Representative acknowledged that there was sufficient evidence to assume that some of the crew could have been killed by one or more members of the military unit. A communiqué dated 20 September 1991 sent to Legal Protection indicates that FMLN decided to refer the case to the Truth Commission which was soon to be established, notwithstanding its request that the Government of Switzerland should hold the accused on Swiss territory until the Commission was able to consider the case. The communiqué also indicates a readiness to turn the alleged perpetrators over to the Salvadorian judicial authorities once the Legislative Assembly has reformed the Judiciary, "although this does not imply that FMLN is abdicating its responsibility for administering justice in accordance with its laws and tribunals". 59/

110. According to the world press, 60/ an FMLN attack on 20 February 1991 on two military bases in the city of San Miguel left two children dead. The local press reported that an FMLN attack on 8 April 1991 in the village of Quezaltepeque left two civilians dead and dozens wounded. 61/ The Special Representative was unable to obtain further information in El Salvador concerning this incident.

111. According to testimony heard by the Special Representative in San Salvador on 12 March 1991, Ramón Orellana was standing with a friend on

the side of a road near the town of Tenancingo, in the Department of Cuscatlán, when he was hit by shots fired by a group of FMLN members. Moments later, when the victim's friend asked why they had been fired upon, the guerrillas said that they had taken them for soldiers. During the victim's wake, members of FMLN sent an apology to his relatives stating that Orellana had been killed by mistake. The victim's friend, Lizandro, reportedly disappeared from his home two days after the incident.

112. According to the local press, 62/ Jesús Francisco Valladares, a National Police officer who was fleeing towards Honduras after being wounded in a battle, was murdered by FMLN members early in April 1991 near the El Poz border post. The Special Representative was unable to obtain additional information in El Salvador concerning this incident.

113. A witness reported that on 22 May 1991 four FMLN members in a red minibus launched a mortar attack on the First Infantry Brigade barracks in San Salvador. Seven mortars were fired; however, six of them hit six different houses in the suburb of Layco, indicating that they were not carefully aimed. One of the mortars exploded in the house at 720.29 Calle Poniente. The fragments killed Gladys Elena Cienfuegos, 62 years old, and Rosa Irma Montúfar de Girón, 60 years old, and injured their granddaughter, a minor, Violeta María Girón Cienfuegos. The women had taken refuge in the living room of their house some distance from the barracks. Half of the house was destroyed.

114. According to an armed forces communiqué, 63/ on 31 May 1991, during a battle in the Department of Morazán, FMLN guerrillas seized Corporal Isidro Pérez Martínez, who was later murdered by his captors. The body exploded into fragments when it was picked up.

115. The same source and the local press 64/ reported that a Guatemalan national, Jerónimo Cahuas, a peddler, was killed by guerrilla fire during an attack along the main highway north on 3 June 1991.

116. According to testimony heard personally by the Special Representative in San Salvador, on 22 July 1991 members of FMLN launched a mortar attack on the National Guard post at Guazapa, in the Department of San Salvador. One of the mortars struck a dwelling on Calle 5 de Noviembre, fatally wounding a minor, Jenifer Sandoval Osorio, and injuring another, Yuri Wilfredo Osorio Suárez. According to the victim's grandmother, the mortar shells were fired from some distance away. Her granddaughter died from injuries caused by shell fragments.

117. According to a communiqué from the Armed Forces General Staff 65/ dated 29 August 1991, at the end of August 1991 an FMLN commando intercepted an ambulance with Red Cross markings that was transporting a seriously injured soldier to a military hospital; the soldier died for lack of proper medical attention. Independent sources confirmed the incident to the Special Representative. A representative of FMLN acknowledged that the incident had occurred, but added that there was no proof that the soldier had not died before the ambulance was stopped.

V. EFFORTS TO STRENGTHEN RESPECT FOR HUMAN RIGHTS AND THEIR RESULTS

118. On 26 July 1991, the United Nations Observer Mission in El Salvador (ONUSAL) was finally established in El Salvador, and as of 15 September it consisted of 101 officials. The Human Rights Division set up under the terms of the San José Agreement on Human Rights of 26 July 1990 between the Government and FMLN immediately took up its duties. On 24 September 1991 ONUSAL issued its first report and this was followed by the first report of the Director of the Human Rights Division. On 15 November 1991 the second report was published, and was followed by the report of the Director of the Human Rights Division. 66/ The Special Representative is very gratified by the positive attitude of the Government and FMLN with regard to the establishment and functioning of ONUSAL. That attitude unequivocally demonstrates the sincere interest of both parties in ensuring the fullest possible compliance with the existing agreements.

119. With specific reference to the efforts by the constitutional authorities of El Salvador to improve the human rights situation, the Special Representative wishes to note that he again found President Cristiani fully disposed to respect those rights. In this connection, in his report on his second year in office, 67/ Mr. Cristiani again reaffirmed the commitment of his office to the defence of the fundamental rights of the human person. The other authorities and official bodies also remain committed to improving the human rights situation. Their determination was described in detail in the 1991 report to the Commission on Human Rights, 68/ and the reader is referred to that document.

120. As to other humanitarian gestures by the Salvadorian authorities, the Special Representative was informed by the General Staff that the armed forces allowed and facilitated the evacuation of, and assistance to, wounded and maimed guerrillas. In this connection, the Special Representative wishes to acknowledge as a humanitarian gesture the transfer of a captured guerrilla commander with infected wounds in both legs to Rosales Hospital in San Salvador on 11 March 1991, with the assistance of the International Committee of the Red Cross (ICRC). 69/

121. FMLN also has made commendable humanitarian gestures, including the unilateral truce declared from 9 to 11 March during the elections, 70/ the truce announced during the summit meeting of Central American Presidents from 15 to 17 July, 71/ and the truce on 13 and 14 September during the negotiations in New York. 72/ The Special Representative also wishes to note the release by FMLN on 8 April 1991, through ICRC, of seven captured Customs officers. 73/ According to an FMLN communiqué, a captured young woman, 15 years of age, was handed over to ICRC representatives on 22 May. The Special Representative has learned of the release of other captured combatants.

122. According to reports which have been made public, FMLN announced an indefinite unilateral truce as from 15 November 1991, with the aim of furthering the negotiations with the Government which were to be resumed on the following day. 74/ 75/ According to the same sources, President Cristiani considered the truce to be a gesture of goodwill and promised to adopt

corresponding unilateral measures. On 21 November, the Government announced its intention to terminate bombing raids and heavy artillery attacks. 76/ 77/

123. While he commends the humanitarian gestures described above and the readiness of both parties to reach an early negotiated peace - under which respect for human rights will be a fact of daily life - the Special Representative nevertheless must point out that both parties committed serious human rights violations during 1991. In his view, there is a serious and alarming gap between proclaimed intentions and results.

VI. CONCLUSIONS

124. After carefully assessing the information included in this report on the situation of human rights in El Salvador in 1991, the Special Representative draws the following conclusions:

Economic, social and cultural rights

125. The situation of the economic, social and cultural rights of Salvadorian citizens continued to be adversely affected by a combination of factors, principally the persistence of the armed conflict between the armed forces and FMLN and the resultant climate of violence.

126. The attacks carried out by the FMLN guerrilla organizations against elements of the country's economic infrastructure also seriously undermined the present and future enjoyment by Salvadorian citizens of important economic, social and cultural rights. Note must, however, be taken of the fact that such attacks were not as widespread and frequent as in past years, although they did increase in the last few months of 1991.

127. In 1991, government harassment of humanitarian, trade union and peasant organizations and resettled communities continued. The Government maintains that some of these organizations answer to FMLN, an allegation which the organizations concerned refute, but even if this were true it would only justify action that remained within the law and respected human rights.

Summary executions

128. Members of the State apparatus, particularly of the armed forces and civil defence forces, continued to carry out politically motivated summary executions, the exact number of which, although difficult to determine, was slightly lower than in 1990. One disturbing fact is the continuing climate of intimidation among certain sectors of the population as a result of explicit threats of summary executions or other human rights violations.

129. Many sources have continued to attribute summary executions and other human rights violations to the so-called "death squads" allegedly linked to or tolerated by the armed forces or the security forces. The Special Representative finds that allegation plausible in theory, although the difficulties of investigating such crimes prevent him from reaching reliable and definite conclusions in specific cases. It is also possible that ordinary offences are being committed under cover of these activities.

130. FMLN, for its part, continued to carry out summary executions of persons alleged to have collaborated with the armed forces, although the numbers were slightly lower than in 1990.

Abductions and disappearances

131. Cases of politically motivated disappearances of individuals continued to be reported. While it is difficult to determine how many there have been and who was responsible, the Special Representative does not rule out the possibility that the "death squads" were involved in some cases.

132. The guerrilla organizations have also abducted off-duty soldiers and civilians and have even, on occasion, forcibly recruited minors.

Treatment of political prisoners

133. There have continued to be cases of torture and cruel, inhuman or degrading treatment during extrajudicial interrogations of political detainees, although the Special Representative believes that these practices are not widespread and do not represent government policy.

Criminal justice

134. The verdict delivered on 25 September 1991 by the jury in the case of the murders of the Jesuit priests and others in November 1989 sets an important precedent in Salvadorian criminal justice, although the Special Representative shares with sectors of local and international opinion the justified misgivings that those who actually planned the murders have not been tried and sentenced. The Special Representative is in any case concerned at the lack of significant progress in the criminal proceedings instituted on many serious human rights violations committed in past years.

The armed conflict

135. The situation of the civilian population in the areas of heaviest fighting remains very difficult and distressing, particularly in resettled communities, and the military operations of the armed forces have also caused deaths and injuries among that population, although only occasionally and through negligence, not on a widespread, indiscriminate or intentional basis. The exact number of such deaths is difficult to determine, although it is lower than in 1990 and lower than that of summary executions outside combat.

136. FMLN, for its part, has continued to cause civilian deaths or injuries as a result of the explosion of contact mines, although it can sometimes be difficult to determine whether FMLN organizations or the armed forces planted the devices. Guerrilla fire has continued to occasionally cause other civilian casualties.

Efforts to strengthen respect for human rights and their results

137. There can be no doubt as to the determination of the President of the Republic and other Salvadorian constitutional authorities to improve the

human rights situation. Although this has occasioned a slight decrease in the number of serious violations of those rights, it is an indisputable fact that serious violations are continuing.

138. FMLN too has shown an interest in respect for human rights, but this has not prevented it from committing serious violations of those rights, although on a slightly lesser scale than in 1990.

139. The Government and FMLN have intensified the negotiating process, under the auspices of the Secretary-General of the United Nations. Significant results have been achieved, giving rise to hopes that the conflict will be terminated.

VII. RECOMMENDATIONS

140. The Special Representative continues to be concerned at the situation of human rights in El Salvador, despite the fact that, in 1991, there was a decrease in the number of violations as compared with 1990. He therefore once again appeals most emphatically to the Government and all the country's political authorities, institutions and forces, including the guerrilla organizations, to take all necessary steps to bring to an immediate and complete end attempts on human life, physical integrity and dignity.

141. The Special Representative also calls most emphatically on the constitutional authorities of El Salvador and FMLN scrupulously to implement the agreements reached in order to ensure that the complete and lasting reconciliation of all sectors of Salvadorian society is achieved as soon as possible. To this end he also recommends to both parties that they should try to inculcate in the most radicalized sectors of society a civic culture of peace and harmony which will ensure the full implementation of the agreements concluded.

142. The Special Representative particularly reiterates to the constitutional authorities of the Republic of El Salvador the recommendations made in his previous report to the Commission on Human Rights, 78/ and specifically:

(a) The adoption of measures to prevent any kind of threats and psychological intimidation against certain sectors of the population;

(b) Perseverance with the judicial reform effort and the establishment of an efficient criminal investigation body under the Judiciary;

(c) Perseverance in carrying out the agrarian reform programme and other structural reforms needed to improve the population's well-being.

143. Lastly, the Special Representative again recommends to all States of the international community, in particular the richest and most developed States, that they increase the assistance necessary to alleviate and improve the situation of Salvadorian citizens who have been displaced, made refugees or resettled as a result of the armed conflict.

Notes

1/ Press release SG/SM/4426, 4 April 1990.

2/ El País, 7 January 1991.

3/ Document S/22060 of 10 January 1991.

4/ El País, 29 April 1991.

5/ El Diario de Hoy, 30 April 1991.

6/ Journal de Genève, 25-26 May 1991.

7/ El País, 3 June 1991; Le Monde, 5 June 1991.

8/ Inforpress Centroamericana, 20 June 1991.

9/ El País, 24 June 1991.

10/ The Guardian, 28 June 1991.

11/ El Rescate, El Salvador Chronology, Vol. VI, No. 7, July 1991.

12/ El País, 19 July 1991; El Rescate, El Salvador Chronology, Vol. VI, No. 7, July 1991.

13/ Le Monde, 30 August 1991.

14/ Diario Latino, 17 and 18 October 1991.

15 The Guardian, 6 December 1991.

16/ See paragraph 12 of the present report.

17/ Press release SG/SM/1277.

18/ Le Monde, 8-9 December 1991.

19/ Central American Labor Defense Network, Urgent Action Bulletin, 18 March 1991.

20/ El Salvador on Line, 25 March 1991.

21/ CRIPDES. Letter dated 23 May 1991.

22/ El Salvador on Line, 9 December 1991.

23/ Ibid., 2 December 1991.

24/ Ibid., 22 April 1991.

25/ Ibid., 19 August 1991.

26/ Ibid., 28 October 1991.

27/ Ibid., 11 November 1991.

28/ Communiqué by the Permanent Mission of El Salvador to the United Nations and Other International Organizations at Geneva, 4 November 1991.

29/ El Diario de Hoy, 22 November 1991.

30/ Ibid., 29 November 1991.

31/ Archdiocesan Legal Protection Office, weekly bulletins; Human Rights Commission (governmental) report to the Special Representative.

32/ Americas Watch report: "El Salvador and Human Rights. The Challenge of a Reform", March 1991, p. 59.

33/ El Salvador on Line, 4 March 1991.

34/ Human Rights Commission (non-governmental) of El Salvador. Letter dated 1 July 1991 to the Special Representative.

35/ El Salvador on Line, 2 September 1991.

36/ Ibid., 15 March 1991.

37/ Amnesty International, "El Salvador. Killing of Gustavo Rosa Ramírez Aguilar", June 1991, AI Index: AMR 29 July 1991.

38/ El Salvador on Line, 15 July 1991; information transmitted to the Special Representative by the Human Rights Commission (non-governmental) of El Salvador, 22 July 1991.

39/ Ibid., 12 August 1991.

40/ Ibid., 5 August 1991; other reports.

41/ Ibid., 9 December 1991.

42/ Armed Forces of El Salvador General Staff, San Salvador, 1 July 1991.

43/ El Salvador on Line, 12 August 1991.

44/ Ibid., 26 August 1991.

45/ Communiqué by the Permanent Mission of El Salvador to the United Nations and Other International Organizations at Geneva, 23 October 1991.

46/ Human Rights Commission (non-governmental) of El Salvador, "Torture in El Salvador", report on cases reported in the first four months of 1991, May 1991.

47/ El Salvador on Line, 18 November 1991.

48/ Ibid., 25 November 1991.

49/ Communiqué by the Ministry of Defence and Public Security, 19 November 1991.

50/ El Salvador on Line, 14 October 1991.

51/ Ibid., 21 October 1991.

52/ Ibid., 9 December 1991.

53/ Report to the Special Representative dated 23 September 1991.

54/ Report of the Supreme Court of Justice to the Special Representative, September 1991; report of the Commission to Amend Salvadorian Legislation to the Special Representative, September 1991.

55/ El Salvador on Line, 22 April 1991.

56/ First report of the Director of the ONUSAL Human Rights Division, San Salvador, 24 September 1991.

57/ El Salvador on Line, 21 October 1991.

58/ Document E/CN.4/1991/34, para. 103.

59/ FMLN communiqué to the Archdiocesan Legal Protection Office, 20 September 1991.

60/ Le Monde, 22 February 1991.

61/ La Prensa Gráfica and El Diario de Hoy, 9 April 1991.

62/ El Diario de Hoy, 5 April 1991.

63/ Armed Forces of El Salvador General Staff, San Salvador, communiqué of 5 June 1991.

64/ La Prensa Gráfica, 5 June 1991.

65/ Communiqué from the Permanent Mission of El Salvador to the United Nations and Other International Organizations at Geneva.

66/ See document A/46/658; S/23222.

67/ El Salvador on Line, 1 June 1991.

68/ Document E/CN.4/1991/34, paras. 107-111.

69/ Communiqué from the Armed Forces General Staff, San Salvador, 7 March 1991.

70/ El Salvador on Line, 4 March 1991.

71/ Ibid., 15 July 1991.

72/ FMLN communiqué, 11 September 1991.

73/ FMLN communiqué, 9 April 1991.

74/ Le Monde, 13 November 1991.

75/ El Salvador on Line, 18 November 1991.

76/ Ibid., 25 October 1991.

77/ Communiqué by the Government of El Salvador, 21 November 1991.

78/ Document E/CN.4/1991/34, para. 134.

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1992/33
17 February 1992

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Forty-eighth session
Agenda Item 12

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Report on the situation of human rights in Afghanistan submitted by Mr. Felix Ermacora, Special Rapporteur, in accordance with Commission on Human Rights resolution 1991/78

GE.92-10764/4224B

CONTENTS

		Paragraphs	Page
	INTRODUCTION	1 - 13	1
Chapter			
I.	GENERAL OBSERVATIONS CONCERNING THE SITUATION OF HUMAN RIGHTS IN AFGHANISTAN	14 - 27	4
II.	SPECIFIC HUMAN RIGHTS PROBLEMS IN AFGHANISTAN	28 - 92	8
	A. The refugee situation	28 - 35	8
	B. Human rights in the context of the armed conflict and of the unrest prevailing in certain parts of the country	36 - 41	9
	C. The situation of prisoners of war and of political prisoners	42 - 60	11
	D. Civil and political rights in areas controlled by the Government	61 - 84	16
	E. Economic, social and cultural rights	85 - 88	21
	F. Self-determination	89 - 92	22
III.	CONCLUSIONS AND RECOMMENDATIONS	93 - 120	24
	A. Conclusions	93 - 113	24
	B. Recommendations	114 - 120	27

Annexes

I.	Joint statement by the Soviet Union, the Russian Federation and the Afghan Mujahidin	30
II.	Joint communiqué issued by the Governments of the Islamic Republic of Pakistan and the Russian Federation	32
III.	Flyer posted around Hayattabad, Kabibian and other places in Peshawar, dated 26 or 27 November 1991	35
IV.	List of prisons and prisoners in the centre and in the provinces	36
V.	Communications issued by the General Directorate for Investigation of the Ministry of State Security of Afghanistan	37
VI.	Rules of procedure of the Commission in Charge of Supervising the Situation of Prisoners, and the Reform of Prisons, in the Country	40

Introduction

1. The Special Rapporteur to examine the question of human rights in Afghanistan was first appointed in 1984 by the Chairman of the Commission on Human Rights, who had been requested to do so by the Economic and Social Council in its resolution 1984/37. The mandate of the Special Rapporteur has been renewed regularly since then by resolutions of the Commission which were endorsed by the Economic and Social Council, with the request that he report to the Commission on Human Rights and to the General Assembly. So far, he has submitted seven reports to the Commission (E/CN.4/1985/21, E/CN.4/1986/2, E/CN.4/1987/22, E/CN.4/1988/25, E/CN.4/1989/24, E/CN.4/1990/25 and E/CN.4/1991/31) and seven to the General Assembly (A/40/843, A/41/778, A/42/667 and Corr.1, A/43/742, A/44/669, A/45/664 and A/46/606).

2. In November 1991, pursuant to Commission on Human Rights resolution 1991/78 and Economic and Social Council decision 1991/259, which extended his mandate for another year, the Special Rapporteur submitted an interim report (A/46/606) to the General Assembly containing preliminary conclusions and recommendations. Having taken note with appreciation of the report, the General Assembly adopted resolution 46/136 of 17 December 1991 in which it decided to keep under consideration, during its forty-seventh session, the situation of human rights in Afghanistan in the light of additional elements provided by the Commission on Human Rights and the Economic and Social Council.

3. The Special Rapporteur has the honour to submit his final report, contained in the present document, to the Commission on Human Rights, in accordance with his mandate. It describes the most important new elements which, in the opinion of the Special Rapporteur, have affected the situation of human rights since his interim report (A/46/606) was presented to the General Assembly in November 1991; the present update should therefore be considered together with the interim report.

4. In keeping with the approach which he has always followed in the matter, the Special Rapporteur carried out two visits to the area during the period of his present mandate in order to obtain the most broadly based information possible. The first visit took place from 10 to 22 September 1991 (Pakistan from 10 to 17 and Afghanistan from 17 to 21 September 1991; on 13 September 1991 the Special Rapporteur visited areas in Afghanistan controlled by opposition forces in Nangarhar Province), and its findings are reflected in the interim report to the General Assembly (A/46/606). The second visit of the Special Rapporteur took place from 29 December 1991 to 5 January 1992 (Pakistan from 29 December 1991 to 2 January 1992 and Afghanistan from 2 to 5 January 1992), with a view to gathering up-to-date information for the purposes of the present report. In addition, the Special Rapporteur also heard testimonies and held consultations relating to his mandate in Europe, in July and December 1991.

5. During his last visit to Pakistan, the Special Rapporteur was received in Islamabad by the Chief Commissioner for Afghan Refugees. He also met with high-ranking officials of the Ministry for Foreign Affairs.

6. In the North West Frontier Province, the Special Rapporteur had talks with Prof. Burhanudddin Rabbani, Minister for Foreign Affairs of the so-called Afghan Interim Government (AIG). He also had talks with a member of the Commanders' Shura (council). While in Peshawar, the Special Rapporteur met with representatives of humanitarian organizations and private individuals.

7. The Special Rapporteur also travelled to Miran Shah where he had talks with the head of the Commanders' Shura, Jallaluddin Haqqani, and interviewed prisoners taken in the battle of Khost. He also met with the leader of one of the opposition parties based in Peshawar, Gulbuddin Hekmatyar. During these consultations, the Special Rapporteur exchanged views on the overall situation in Afghanistan, with particular reference to human rights issues and the situation of prisoners.

8. During his last visit to Afghanistan, in accordance with the schedule established in consultation with the Afghan authorities, the Special Rapporteur was received by the President of Afghanistan, the President of the High Court of Appeal, the Minister of Labour and Social Affairs, the Minister of the Interior, the Minister for Repatriates Affairs, the Chief Justice, the Deputy Minister for Foreign Affairs and the First Deputy Minister for State Security. In addition, he had talks with representatives of the commission in charge of supervising the situation of prisoners. The Special Rapporteur also met with the President and representatives of the Association of Afghan Lawyers.

9. In Kabul, the Special Rapporteur visited the Pol-i-Charkhi central prison.

10. The Special Rapporteur wishes once again to express his sincere appreciation for the valuable assistance and full cooperation he has received from the Afghan and Pakistani authorities. In this respect, he also wishes to thank the Office for the Coordination of United Nations Humanitarian and Economic Assistance Programmes relating to Afghanistan (UNOCA) for its most efficient logistical assistance without which his visit would not have been possible.

11. Chapter I of the present report contains general observations concerning the situation of human rights in Afghanistan during the period October 1991 to January 1992. Chapter II describes specific human rights problems, with special emphasis placed on the situation of refugees and prisoners, which the Special Rapporteur continues to consider as paramount human rights problems. It also considers the human rights situation in Government-controlled areas and in areas not under government control, human rights in the light of the armed conflict, civil and political rights, as well as the question of economic, social and cultural rights. In addition, it examines the question of self-determination in the light of a possible political settlement of the Afghan question. Chapter III contains the conclusions and recommendations which the Special Rapporteur has drawn from the analysis of the supplementary information he has recently gathered.

12. In addition to gathering information during the visits to Pakistan and Afghanistan and to the consultations he had in Europe with a view to informing the Commission on Human Rights and the General Assembly in the most impartial and objective manner possible, the Special Rapporteur has followed the course

of events throughout the period covered by this report, i.e. since the extension of his mandate in March 1991, and systematically evaluated written and oral information relevant to his mandate received from various individuals and organizations.

13. In preparing this report, the Special Rapporteur has consulted various reports prepared by United Nations bodies and specialized agencies, as well as those by non-governmental organizations, dealing with the humanitarian and human rights aspect of the Afghan problem. In this context, he would like to refer to two recent publications, namely "Untying the Afghan Knot: Negotiating Soviet Withdrawal" by Riaz Mohammad Khan, 1991 and "The Silent Soldier: The Man Behind the Afghan Jehad" by Brigadier (Retd.) Mohammad Yousaf, 1991.

I. GENERAL OBSERVATIONS CONCERNING THE SITUATION OF HUMAN RIGHTS IN AFGHANISTAN

14. The Special Rapporteur has placed the situation of human rights in Afghanistan within the context of the overall political developments affecting the country. In 1991, these developments have included the statement on Afghanistan issued by the United Nations Secretary-General on 21 May 1991, which contained a five-point peace plan (see document A/46/606, annex I), the Joint Declaration of Islamabad of 30 July 1991 (A/46/606, annex II) and the Joint Declaration of Tehran of 29 August 1991 (A/46/606, annex III). In addition, the Special Rapporteur took note of the joint statement of the United States and the Soviet Union of 13 September 1991 on the simultaneous cut-off of weapons deliveries to the Afghan parties by 1 January 1992 (the so-called "negative symmetry"). The Special Rapporteur also took note of the report of the Secretary-General on Afghanistan to the General Assembly at its forty-sixth session (A/46/577-S/23146).

15. Political developments which should be taken into account when considering the human rights situation in Afghanistan took place in late 1991. From 11 to 15 November 1991 a delegation of Afghan mujahidin met in Moscow with representatives of the Union of Soviet Socialist Republics and of the Russian Federation. A joint statement was issued on the occasion of this visit (see annex I). In December 1991, the Organization of the Islamic Conference adopted a resolution on Afghanistan. At the invitation of the Government of Pakistan, a delegation of the Russian Federation, headed by Mr. A.V. Rutskoi, visited Pakistan from 19 to 22 December 1991. A joint communiqué concerning this visit was issued on 22 December 1991 (see annex II). All of these texts contain elements concerning human rights.

16. The joint statement of the Soviet Union, the Russian Federation and the Afghan Mujahidin contains the following references to human rights:

> "1. The Soviet invasion of Afghanistan and its participation in the war, which brought and is bringing unlimited sufferings to the Muslim people of Afghanistan, was condemned and acknowledged as anti-constitutional acts."
>
> "3. The Mujahideen delegation announcement that General Elections will be held in Afghanistan within a period of two years from the moment of transfer of power from Kabul regime to the Interim government. These elections will be held under the aegis of the OIC and UNO."
>
> "5. Both sides agreed to make all possible efforts for release of the POWs. Out of their efforts for peace, Mujahideen will take measures for release of First Group of the Soviet POW before 1 January 1992. The necessary practical measures to be taken for implementation of such a decision will be carried out by a Joint Commission."
>
> "7. The Soviet Union will take necessary part in common efforts for the re-habilitation of destruction caused by the war."

17. The Organization of the Islamic Conference, in its resolution concerning Afghanistan, made the following reference to human rights:

> "4. Recognizes that the formation of a broad-based Government is essential for the restoration of peace and for enabling the people of Afghanistan to exercise their right to choose their own political, economic and social system free from outside intervention;"
>
> "5. Calls for the creation of the necessary conditions so that Afghan refugees would return to their home;"
>
> "12. Decides to continue generous humanitarian assistance to the Afghan refugees and to work for their repatriation and rehabilitation in Afghanistan in cooperation with the Islamic Republic of Pakistan and the Islamic Republic of Iran;"
>
> "13. Renews its call to all States as well as national and international organizations to extend assistance to alleviate the suffering of Afghan refugees."

18. In their joint communiqué, the Governments of Pakistan and the Russian Federation expressed their commitment to a speedy political settlement of the Afghan problem and recognized the fundamental right of the Afghan people to determine their destiny free from outside interference. They also welcomed the five-point peace plan formulated by the Secretary-General and emphasized the need for the early voluntary return of the 5 million Afghan refugees living in Pakistan and the Islamic Republic of Iran to their homeland in safety and with honour. The following passage refers to prisoners of war:

> "Recognizing the inadmissibility of using prisoners of war for political purposes, the two sides resolved to make every effort that all POWs in Afghanistan would be freed in the near future on the basis of humanitarian considerations."

19. The Special Rapporteur has noted that these political texts do not refer explicitly to the human rights situation in Afghanistan; however, they do contain important elements concerning human rights, mainly those of refugees and prisoners of war.

20. The various commentaries these statements have prompted in different quarters demonstrate that there is a potential danger that the envisaged political solution may not meet the necessary requirement of clarity and may therefore give rise to misunderstandings.

21. The Special Rapporteur is concerned that the envisaged political solution of the Afghan conflict may minimize its human rights aspect.

22. It should be borne in mind that certain human rights problems in Afghanistan are a consequence of the military and political situation while others have to be understood in a separate, purely human rights context. The

military aspects of the conflict concern human rights, particularly the right to life. These are characterized by the waging of holy war (jehad), rocket and artillery attacks, the placing of mines, the number of death sentences which have been handed down and the number of mass executions that have taken place.

23. The conflict also concerns the exercise of the right to self-determination by the Afghan people. Economic and social rights are also affected by the conflict in view of the widespread destruction and the economic situation in which all Afghans find themselves, whether they live in urban or rural areas, whether these areas are controlled by the Government or by the opposition, or whether they live in refugee camps.

24. The Special Rapporteur is of the opinion that only a negotiated political solution that is not imposed on the Afghan people can change the human rights situation for the better. Efforts undertaken by the Government alone to improve the human rights situation should be welcomed but they cannot be regarded as exhaustive because the principal human rights issues are a direct consequence of the conflict and can only be solved if the nature of the conflict is altered. The conflict should become a political one bound by the rules of democracy; only this can guarantee the enjoyment of human rights.

25. When the adversaries of the present Government claim that a negotiated solution to the conflict may lead to compromises which could be incompatible with the goals of the jehad or that it would be immoral to negotiate with those whom they hold partly responsible for the outbreak of the conflict, significant changes in the human rights situation cannot be expected. Certain experts hold the view that as long as the city of Kabul is not taken by opposition forces, the present Government will continue to be a political reality. A change in this situation would either have to result in political compromise or in a military victory by the opposition forces. In any event, human rights should be an essential element in whatever solution might emerge.

26. Despite the fact that the current Government is recognized by the international community as the legal authority in the country, it must be borne in mind that in practice it does not control the totality of the country's territory. As regards the responsibility of the Government for the human rights situation in areas which it does control, the Special Rapporteur has always endeavoured to distinguish clearly between acts which can be imputed to the Government and those imputable to the opposition forces. The most ferocious and intensive armed conflict is waged in certain regions of Afghanistan between rival groups belonging to the political parties of the opposition. This was and still is the case in Kunar Province which the Special Rapporteur had the occasion to visit in September 1990. This province was originally administered by three groups, one belonging to the Afghan Interim Government (AIG), Hezb-e-Islami Afghanistan (headed by Gulbuddin Hekmatyar) and the Salafis (also known as Wahabis). When the administration run by the AIG left the province, the Salafis and Hezb-e-Islami confronted each other in the most ruthless manner. Numerous persons lost their lives as a result of this conflict. Finally, Maulawi Jamil-ur-Rahman, the Salafi

leader, was assasinated on 30 August 1991. These developments have been carefully documented in issue 125-126 of the Monthly Bulletin published by the Afghan Information Centre.

27. Considerations of this sort should be borne in mind when the human rights situation in Afghanistan is examined. There are certain human rights issues for which the present Government is only indirectly responsible. They are the result of actions initially undertaken by the former Government and the occupying forces of the Union of Soviet Socialist Republics.

II. SPECIFIC HUMAN RIGHTS PROBLEMS IN AFGHANISTAN

A. The refugee situation

28. The human rights of Afghan refugees have always been of particular concern to the Special Rapporteur. This concern is also expressed in the Geneva Agreements of April 1988 (i.e. the Agreements on the Settlement of the Situation Relating to Afghanistan) a section of which deals with the voluntary return of refugees as well as in the pronouncements of all international organizations on the matter. Reference to the situation of refugees is also made in "Untying the Afghan Knot: Negotiating Soviet Withdrawal" by Riaz Mohammad Khan. The fundamental rights and human dignity of refugees are particularly endangered by the circumstances in which they find themselves and by the life they are obliged to lead. The situation of refugees is always precarious, even in cases when a Government such as that of Pakistan uses all the means at its disposal to cope with the situation of these refugees in conjunction with the assistance provided by the international community and United Nations agencies, in particular the World Food Programme and the Office of the United Nations High Commissioner for Refugees (UNHCR).

29. The information provided by the Chief Commissioner for Afghan Refugees of Pakistan and by the UNHCR shows that the total number of Afghan refugees in Pakistan and the Islamic Republic of Iran is still more than 5 million, 3.2 million of whom live in Pakistan. It is estimated that since the outbreak of the Afghan conflict more than 700,000 children have been born in refugee camps.

30. In the global context of human rights, the problem of internally displaced persons within Afghanistan should not be overlooked.

31. The economic situation of the refugees - particularly of those who are not employed, i.e. mostly women and children - depends on the host countries and on the international community. The year 1991 saw a reduction in the ration scale for wheat and edible oil distributed to refugees, while the distribution of other food commodities such as milk, sugar and tea has stopped altogether. This has had an important impact on the local market. The programme of Operation Salam (Office for the Coordination of United Nations Humanitarian and Economic Assistance Programmes Relating to Afghanistan) for 1992 describes the needs of large-scale repatriation (see pages 59-63). The requirements for the refugees in terms of food items for 1992 are considered by the Government of Pakistan on a reduced scale as follows: wheat, 469,030 metric tons; edible oil, 23,450 metric tons; DSM, 31,267 metric tons; sugar, 23,450 metric tons and tea, 1,760 metric tons. The daily ration of wheat has been reduced from 500 grams to 400 grams.

32. The medical care and educational programmes for refugees depend on the strength and financial resources at the disposal of the political parties they belong to, as the parties have divided the refugee population between them. The most vulnerable segment of the refugee population is composed of women and children. They are not only dependent on men, but are increasingly subjected to restrictions which are inherent in refugee life as such. At the end of November 1991 flyers were posted in public places in Peshawar urging the

refugee community to stop activities which go against Sharia. It states, inter alia, "... no woman or young girl should be with foreigners or work in non-Islamic organizations and even go to these places. If actions are repeated, the men of the family - fathers, uncles, brothers, etc - those directly responsible for the family, will get the punishment if they don't obey this ... This is the final request - correct your habits; otherwise, according to the Islamic code, we will resolve it". (see annex III). The situation of refugees raises problems of the enforcement of law and order and gives rise to unrest among the refugee population.

33. The voluntary repatriation project undertaken jointly by the Government of Pakistan and the UNHCR has so far not resulted in a massive return, as expected and foreseen by the Geneva Agreements. The Chief Commissioner for Afghan Refugees of Pakistan has indicated that 247,801 ration cards have been returned to the authorities since the launching of this programme. However, the number of ration cards which have been returned does not necessarily correspond to the actual number of refugees who have returned to Afghanistan. This information can be provided more accurately by the Afghan authorities. The Minister for Repatriate Affairs of Afghanistan stated that 56,199 persons had returned to Afghanistan between March and December 1991. Between September 1991 and January 1992, 27,242 persons returned, of whom 10,274 came from the Islamic Republic of Iran and 16,828 from Pakistan.

34. Within the scope of the limited financial resources available to them and the circumstances of war, the Afghan authorities are doing their best to facilitate the economic, legal and educational integration of the returnees into Afghan society. Returnees from Pakistan usually try to reach the provinces close to the border through their own means. Refugees returning from Iran are temporarily accommodated in guest houses in Herat. The Afghan authorities are currently facing considerable difficulties regarding their transport to their places of origin. At the beginning of January 1992 there were approximetely 4,000 returnees from Iran who had been waiting for a month in a guest house in Herat owing to a lack of adequate transport facilities.

35. It has been estimated that two cargo planes could transport about 400 persons a day, but funds are not available to acquire or charter them. The Afghan Government is currently not sending returnees to the northern provinces by land transport due to fear of harassment by opposition forces. Should large-scale repatriation take place, the Government of Afghanistan has estimated that approximately $US 100 million would be required to cover the basic needs in terms of household items of approximately 620,000 families.

B. Human rights in the context of the armed conflict and of the unrest prevailing in certain parts of the country

36. The overall situation concerning control over the country's territory has not altered since the publication of the Special Rapporteur's interim report to the General Assembly (A/46/606, paras. 40-44). Owing to time constraints during his last mission the Special Rapporteur was unable to visit areas in Afghanistan not under Government control. However, oral reports indicate that functioning civilian administrations have been established, particularly in Wardak province and the northern parts of the country which are not under the control of the Government. It has been stated that teachers who were formerly

civil servants of the Government have been kept in office. The Special Rapporteur has received the Activity Report for 1990-1991 published by the Afghan Center for Rural Development (ACRD), an Afghan non-governmental organization registered in Peshawar, which provides a detailed account of the agricultural development, livestock and veterinary services, irrigation system, health, education and construction and engineering programmes in Wardak province.

37. Since the publication of the interim report to the General Assembly, the hostilities in the country have diminished. Nevertheless, in September 1991, the city of Jalalabad sustained intensive attacks by opposition forces in which long-range artillery was also employed. Reportedly, 400 persons were killed among whom only four were soldiers. Heavy fighting which has caused numerous casualties among the opposition forces has been reported around opposition outposts near Gardez. According to the information received, in December 1991 rocket attacks by opposition forces killed 20 persons in Kabul and injured more than 50 civilians. In addition, 18 persons were killed and 30 injured in Kandahar, while 20 persons were killed and 50 injured in Nangrahar. Subsequent to the entry into force on 1 January 1992 of the agreement reached by the Union of Soviet Socialist Republics and the United States of America on 13 September 1991 to cut off arms supplies to all Afghan parties, no rocket attacks whatsoever have been reported.

38. The Afghan Minister of the Interior indicated that from 21 March to 27 December 1991, 169 persons were killed and 404 injured as a result of rocket attacks, which the Special Rapporteur considers to be terrorist acts under Additional Protocol I to the Geneva Conventions of 1949.

39. The problem of mines remains one of the main concerns as it is closely linked with the right to life. The Special Rapporteur is pleased to report that the Afghan Government has now, for the first time, handed over Soviet mine field plans to the United Nations. The Operation Salam programme for 1992 contains a survey of mine clearance carried out in 1991 (pages 19 and 20). The Afghan Government recently informed the Special Rapporteur that the De-mining Commission headed by the Prime Minister is envisaging the establishment of contacts with the competent United Nations bodies concerning mine awareness programmes and de-mining operations. The Minister of the Interior informed the Special Rapporteur about de-mining activities by the Afghan Government in the areas of Kabul and Logar, where 38 villages located along a distance of 160 km had been de-mined. A total of 1,704 mines have been cleared in different provinces and tonnes of explosive and ammunition were removed from these areas. Owing to the deployment of millions of mines throughout the country, these initial efforts and results only constitute a very modest beginning. The "Kabul Times" and The "Journal de Genève" have reported on de-mining activities in Afghanistan in their issues of 22 November 1991 and 11 November 1991 respectively.

40. The Special Rapporteur has provided an account of his visits to various hospitals for war-wounded Afghans after his visit to the region in September 1991 (A/46/606, para. 51). Although he did not visit hospitals during the trip he carried out in December 1991 and January 1992, the Special Rapporteur

was nevertheless informed by the representatives of the International Committee of the Red Cross in Peshawar and Kabul that their hospitals have had a decrease - or at least no increase in the number of patients due to a possible seasonal abatement of military operations.

41. The current situation of human rights in Afghanistan continues to be characterized by unrest in many parts of the country. The power struggle between opposition groups in Kunar province is described at length in the Monthly Bulletin of the Afghan Information Centre (issue covering October, November and December 1991, page 28). The Bulletin also refers to political assassinations: Dr. Abdul Rahman Zamani was wounded on 30 October 1991 near Pabbi, east of Peshawar; an influential elder from Kunar province was killed on 12 November 1991 in the area of Darush (Chitral); Aziz Ahmad Osmani from the International Rescue Committee (IRC) was killed on 25 November 1991 at University Town, Peshawar; on 29 November 1991 an activist of the Afghan Social Democratic Party was killed in lower Tehkal; a leader of the eastern tribes, Mr. Noorullah Khan, was killed on 30 November 1991 in Nauthia, Peshawar; a commander affiliated with the Hezb-e-Islami (Khalis) was killed in early October 1991 in Koh-e-Safi; Maulawi Jamil-ur-Rahman, a Salafi leader, was assassinated in Bajawar on 30 August 1991. These are only a few examples of prominent Afghan leaders and personalities who were killed or wounded, most of them by unidentified persons. It has been alleged that no thorough investigations have been carried out by the competent authorities into these incidents. Reference is also made to an assassination attempt against the former king of Afghanistan, Zaher Shah, that took place in Rome in November 1991.

C. The situation of prisoners of war and of political prisoners

42. The issue of prisoners - prisoners of war, political prisoners and hostages (not including common law prisoners) - is of particular international concern in the complex human rights situation in Afghanistan. While armed conflicts generate prisoners in large numbers, it is certainly against international law to use prisoners or their families for bargaining purposes or as hostages.

43. The joint communiqué issued by Pakistan and the Russian Federation, the joint statement made after the meeting of the Afghan Mujahidin with representatives of the Governments of the Soviet Union and the Russian Federation, and General Assembly resolution 46/136 (paras. 6-9 and 11) all refer to the release or exchange of all prisoners of war and the protection of all prisoners in accordance with humanitarian rules. The persons referred to are those held by the Afghan Government, by political parties of the opposition and by opposition field commanders; a number of Afghan prisoners are also detained by the authorities of Pakistan.

44. It is difficult to assess the number of prisoners in the above-mentioned categories who are currently detained by all sides. Information coming from the Afghan authorities could be checked to a certain extent by the Special Rapporteur and more thoroughly by the International Committee of the Red Cross which now has full access to Afghan prisons both in Kabul and in the

provinces. The Special Rapporteur has received a list of the names of Afghan prisoners detained by the Pakistani authorities from the Pakistani Government. There are also lists of Soviet soldiers whose fate and present whereabouts are unknown. As regards prisoners held by opposition forces, the only information the Special Rapporteur received concerned prisoners taken in the battle of Khost. Approximately 1,700 Afghan soldiers, of whom about 20 per cent were members of the Secret Police, including a number of generals and other high-ranking officers, were said to be held at the time of the Special Rapporteur's visit; approximately 1,000 of them were reportedly released in mid-January 1992.

45. The Special Rapporteur has received the following information from the Afghan Government concerning the exchange of prisoners:

> "Report of the Commission for the Exchange of Prisoners of War on the liberation of officers and soldiers and active members of social organizations, from its inception up to the 14th of Djadi of 1370 (4 January 1992)
>
> The Commission for the Exchange of Prisoners of War has been created pursuant to an order dated 25/10/66 (15 January 1988) of the President of the Republic of Afghanistan, in order to facilitate the return of the members of the armed forces and of the government apparatus to the country. It has been charged with establishing contact and starting negotiations with the commanders of opposition groups in order to exchange prisoners with those belonging to the opposition and who are in the hands of the Government.
>
> From its inception, the Commission has been able to perform its duties successfully, taking into account the circumstances prevailing in the country. These results are as follows:
>
> 1. 3,142 officers have been liberated.
>
> 2. 1,800 soldiers have been liberated.
>
> 3. 204 civilians have been liberated.
>
> The other side has liberated or exchanged 1,231 persons.
>
> Out of 5,146 prisoners belonging to the Government, 106 have been liberated against the payment of 19,810,000 Afghanis to the opposition groups.
>
> Furthermore, since 27/11/67 (16 February 1989), 10 Soviet soldiers and officers who were in the hands of extremist groups have been liberated and handed over to the authority of the Soviet Embassy in Kabul."

46. The legal status of prisoners who were members of the former Soviet armed forces is clear: they are prisoners of war in the meaning of the Third Geneva Convention. In addition, the so-called political prisoners held in Afghan prisons who belonged to the armed forces of the opposition may also be

considered as captured combatants within the meaning of the Geneva Conventions and Additional Protocol I thereto, irrespective of their internal legal status (most of them are considered to be terrorists within the meaning of the Afghan law concerning terrorism).

47. The principal rules applicable to all prisoners are the Standard Minimum Rules for the Treatment of Prisoners adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

48. A leader of the opposition who is also an eminent Islamic theologian, Professor Burhanuddin Rabbani, told the Special Rapporteur that a principle of Sharia requires that verse No. 40, i.e. the "Shura Sura" of the Holy Koran be respected with regard to clemency in the treatment of prisoners. The verse states "pardon and amnesty is much better than revenge. The pleasure you will derive from pardoning is much greater than for revenge." In addition, Professor Rabbani indicated that a prisoner would be judged according to the law and that there could be no punishment without trial. There should be due process of law and attenuating circumstances would be taken into account. The sentence could be reduced accordingly. He also informed the Special Rapporteur of two sayings by the Holy Prophet: "It is preferable to commit an error in the non-application of the sentence than in its application" (which would imply that it should be applied lightly); and "The smallest evidence which can be used in favour of the criminal should be used so that the sentence is not carried out." Finally, he stated that in Islam, the life of man is priceless, adding that there is a hadith by the Holy Prophet which says "When a person is killed, the wrath of God comes out."

49. As concerns prisoners of war, including combatants, the Third Geneva Convention and the First Additional Protocol apply. The Third Geneva Convention is binding upon the Afghan Government, as it has acceded to the Geneva Conventions of 1949. It is also binding on the participants in the conflict, at least with respect to article 3. The First Additional Protocol states that the general rules of the Conventions are to apply. In any case, the Protocols Additional to the Geneva Conventions of 1949 serve as guidelines for the organs of the United Nations.

50. With regard to prisoners detained in Afghan prisons, the rules contained in articles 42 and 133 of the Afghan Constitution apply. Article 42 states:

> "In the Republic of Afghanistan, punishment incompatible with human dignity, torture and excruciation are prohibited. Obtaining confession, testimony or statement from an accused or any other person by compulsion or threat is prohibited. Statements or testimony taken from an accused or other person by means of compulsion shall not be valid.
>
> A public servant who tortures an accused or any other person for obtaining statements, testimony or confession, or who issues orders for torture, shall be punished in accordance with the law. Acting on the orders of superiors in the commission of unlawful deeds cannot be the ground for the plea of innocence."

Article 133 states:

> "The Republic of Afghanistan respects and observes the United Nations Charter, the Universal Declaration of Human Rights and other accepted principles and norms of international law."

51. The field commanders who are members of the Nationwide Commanders' Shura (Council) stated that they would treat their prisoners humanely. Gulbuddin Hekmatyar, leader of the Hezb-e-Islami Afghanistan party, has issued a written order concerning this matter, the translation of which reads as follows:

> "In the name of God
> Hezb-e-Islami Afghanistan
>
> To all the Commanders of the Hezb-e-Islami Afghanistan, I salute you.
>
> Concerning all the prisoners of war
>
> The following points shall be strictly respected and each and every Mujahed shall be instructed to follow them with the utmost seriousness:
>
> 1. No person is allowed to insult, threaten, harass or murder a prisoner of war.
>
> 2. Concerning food and clothes: Attention shall be paid to ensure that the prisoners of war get the same kind of clothes as the Mujahedin and their food shall also be the same as that of the Mujahedin.
>
> 3. If, in case of acute necessity, the prisoners of war are called to do some work, their working day shall not exceed that of any Mujahed in the centre.
>
> 4. The prisoners of war shall receive the same medical care as the Mujahedin.
>
> 5. Family members are allowed to visit prisoners.
>
> 6. Adequate attention shall be paid to the intellectual development of the prisoners of war.
>
> Wishing you success,
> Respectfully,
> Hekmatyar"

52. The Special Rapporteur is not familiar with the actual treatment of prisoners held by opposition forces. He stated in his interim report to the General Assembly that no atrocities had been reported against prisoners taken after the surrender of Khost, which has also been confirmed by imprisoned Afghan officers. However, there are allegations which the Special Rapporteur has not been able to verify concerning relatives of Secret Police personnel who were allegedly executed on the first day that opposition forces entered

Khost. On the other hand, it has been said that Afghan soldiers have been released in the northern parts of the country after they had been taken by opposition forces.

53. The Special Rapporteur was able to see, near Miranchah, Pakistan, prisoners holding the rank of general and other high-ranking officers, including those belonging to the Secret Police, who were taken during the battle of Khost by the opposition forces led by Commander Haqqani. They appeared to be in good health and were said to be treated in conformity with principles enshrined in the Third Geneva Convention: they were not compelled to work, (art. 50-54), they underwent medical examinations (art. 55), the Detaining Power reported their detention (art. 69), they received a prisoner's capture card (art. 71) and they expected to be released (art. 118). However, conditions appear to be attached to the release of high-ranking officers concerning, inter alia, contacts with their families.

54. On the contrary, the approximately 1,700 soldiers, of whom about 400 were said to belong to the Secret Police, whom the Special Rapporteur was unable to see as they were being held in Afghanistan by the opposition forces, appeared to be forced to work for their captors. The Special Rapporteur did not have the opportunity to examine their working conditions, nor to determine whether they were in conformity with the Third Geneva Convention. He was told that all of those prisoners would soon be liberated. As indicated above, approximately 1,000 prisoners of this group were reportedly freed in Dawara (Paktia province) in mid-January 1992. The International Committee of the Red Cross was able to visit these prisoners once but was unable to repeat these visits owing to particular circumstances. However, ICRC was able to visit a number of prisoners held by other opposition forces regularly.

55. An additional condition for the release of prisoners appears to be whether the prisoner is considered to be a "good Muslim".

56. Since the withdrawal of Soviet troops from Afghanistan in February 1989, the Soviet authorities have claimed that there are numerous Soviet prisoners in the hands of the opposition groups. The discussions concerning these persons have had a considerable political impact, as all the important communiqués and declarations which have been issued since that time refer to the fate of the former Soviet soldiers. Names of missing Soviet military personnel have been handed to the International Committee of the Red Cross as well as to opposition groups. General Assembly resolution 46/136 also refers to their release. Their exact number is not known, nor is it known whether all such personnel taken by opposition forces are still alive: occasionally, one is set free, while others are thought to be dead. Since the dissolution of the Union of Soviet Socialist Republics, there seems to be no centralized body which coordinates the search for these prisoners and which would systematically undertake the necessary measures to obtain their release. In this respect, the conflict has ceased. Article 118 (1) of the Third Geneva Convention reads as follows: "Prisoners of war shall be released and repatriated without delay after the cessation of active hostilities ... each of the Detaining Powers shall itself establish and execute without delay a plan of repatriation ..." The Special Rapporteur is of the opinion that combatants as defined by article 3 common to the Geneva Conventions are covered by article 118 (1) of the said Conventions on humanitarian grounds.

57. From time to time, all parties to the conflict - opposition parties, commanders and the Afghan Government - select from among their large reserves of prisoners a certain number which are to be released or exchanged. The criteria for selection are either purely political or totally arbitrary.

58. During his last visit to the region, the Special Rapporteur was informed about the release of an American hostage, Mr. Joel DeHart, who had been in the custody of the Afghan Mujahidin for approximately six months. He is said to have been detained in the province of Ghazni by a field commander belonging to the Hezb-e-Islami Afghanistan party. The Special Rapporteur pleaded for his release with Mr. Gulbuddin Hekmatyar, leader of the aforementioned party, on 31 January 1991.

59. Frequent allegations have been made and reports have been received concerning the torture and ill-treatment of prisoners by opposition groups, extrajudicial killings inside Afghanistan and in the border areas of Pakistan, as well as reports of death threats. The Special Rapporteur is of the opinion that such allegations and reports concern the human rights situation in Afghanistan. However, he was unable to verify them in view of the fact that he did not have the possibility of contacting the witnesses mentioned in some of the accounts of such cases.

60. The treatment of political prisoners and prisoners in detention centres run by the Afghan Government will be considered at greater length in the next chapter.

D. Civil and political rights in areas controlled by the Government

61. In all situations such as the one prevailing in Afghanistan, the world community, and in particular non-governmental organizations (in this case Amnesty International and Asia Watch), are especially interested in the question of personal liberty and security. It should be recalled in this regard that the fate of at least 47,000 persons who were reported as missing within the meaning of the United Nations criteria since the period 1978-1980 has still not been clarified and it would appear that no effective attempts are being made to discover their fate.

62. There are two groups of prisoners besides common law prisoners who may be considered as political prisoners within the meaning of United Nations criteria used in similar situations. As regards the policy of apartheid, United Nations experts have developed a concept of what constitutes a political prisoner, first with regard to Namibia and later on with regard to South Africa. According to this concept, a political prisoner is a person whose actions have served a political goal which goes against official policy of a given Government. There ought to be a certain proportionality between the aim and the act by which this political aim is intended to be achieved. Even when such acts threaten private individuals or inflict damage on property which is not linked to the Government in any way, such acts may be considered as political acts and the prisoners taken in this connection can be considered as political prisoners. This criterion also applies to persons who are considered to be terrorists under national laws, as is the case in Afghanistan.

63. The two categories of political prisoner are convicted prisoners and those who have not been convicted. In the latter category are persons under interrogation, those who are awaiting trial or who are awaiting sentencing. At present, the total number of convicted prisoners in the country is 4,685, of whom 2,860 are political prisoners and 1,825 are common law prisoners. The exact breakdown of these numbers by province and category is reproduced in annex IV to the present report. They are detained under the authority of the Ministry of the Interior.

64. In addition, there are currently 436 prisoners who are awaiting sentencing in Kabul, 358 in Blocks 1 and 2 at Pol-i-Charkhi central jail and the remainder in the General Directorate for Investigation in Sedarat. There were 101 prisoners in Block 1 and 257 in Block 2. Out of the total number of prisoners at Pol-i-Charkhi, 115 were awaiting trial in the second instance, 20 were under interrogation, while 200 were awaiting a final decision of the court. Among these prisoners there were 15 foreigners of whom 10 were Pakistani and 5 Iranian. The exact breakdown of these numbers by province and category is reproduced in annex V to the present report. These prisoners are under the authority of the Ministry of State Security.

65. During a discussion with the President of Afghanistan the Special Rapporteur was informed that since the launching of the policy of national reconciliation, 20,518 prisoners have been released by presidential decrees in accordance with article 75, point 8, of the Afghan Constitution which empowers the President of the Republic to pardon and remit sentences. However, the figure of over 20,000 prisoners released through different amnesty decrees over the years has to be viewed in conjunction with numerous new arrests and occasional re-arrests which balance out to a considerable extent the number of releases.

66. According to the information provided by the Ministry of the Interior, during the period 21 March to 27 December 1991, 1,355 prisoners were released of whom 574 were political prisoners. On 27 December 1991, 100 political prisoners were freed as a result of a unilateral and unconditional measure taken by the President. The President of the Republic indicated that a similar gesture of unconditional release of prisoners by the opposition forces would be welcome. The members of the Commission in charge of supervising the situation of prisoners drew the Special Rapporteur's attention to article 75, point 8, of the Constitution which empowers the President "to pardon and remit sentences". It would also appear that the President has discretionary power to establish the criteria for granting pardon to prisoners.

67. The Special Rapporteur is particularly grateful that after intervening on behalf of a prisoner at the direct request of his parents, the President of the Republic availed himself of the power accorded to him under article 75 of the Constitution to order the release of Zamaryalai Melgerai, son of Professor Fakir Mohammed Melgerai, without any bureaucratic procedures. The Special Rapporteur received the former prisoner at his hotel and immediately took him to his parents.

68. The Special Rapporteur informed the General Assembly at its forty-sixth session about the death penalty to which 97 persons were sentenced, in the

context of their alleged involvement in the attempted coup d'état of March 1990. The General Assembly, in its resolution 46/136, appealed to the Afghan authorities to commute these death sentences. The Special Rapporteur made an appeal to the same effect, both orally and in writing, to the President of the Republic during a meeting. The President responded favourably to this appeal, adding all prisoners who had been sentenced to capital punishment at that time to the list of persons whose sentence would be commuted, i.e. 114 persons in all. The Special Rapporteur expressed the hope that all 114 death sentences would be commuted officially in the near future.

69. The Special Rapporteur was subsequently informed by note verbale that the President of the Republic had issued amnesty decree No. 1355 concerning the limitation of the application of the death sentence, stating that:

> "in accordance with paragraph 8 of article 75 of the Constitution of the Republic of Afghanistan, the persons condemned to death for their participation in the attempted coup d'état of March 1990 will be able to benefit from a commutation of their death sentence to 20 years' rigorous imprisonment".

70. In addition, the Special Rapporteur was informed by note verbale that:

> "President Najibullah has signed a decree about the limitation of the death sentence. According to his decree, the death sentence can not be applied except in the following cases: intentional murder, massacre, explosion of explosives accompanied with killing, highway robbery with murder, crimes as a result of which the territory of Afghanistan totally or partially will come under the sovereignty of a foreign state and to jeopardize the territorial integrity and independence of the country. In other cases, the death sentence be amended to 20 years' imprisonment. The decree is effective from January 15, 1992."

71. In addition, the Special Rapporteur was informed by note verbale dated 3 February 1992 that:

> "Esteemed Najibullah, President of the Republic of Afghanistan, has given a positive answer in accordance with your request to commute the death penalty of the insurgents of the coup d'état of March 1990 into a prison sentence, as discussed during your visit.
>
> "The Presidential Bureau herewith certifies that through Decree No. 1355 dated 8/11/70 (28 January 1992) the death sentence of the aforementioned insurgents has been commuted into 20 years' imprisonment."

72. The Special Rapporteur has received oral confirmation that all 114 persons against whom death sentences had been imposed were covered by the above decrees.

73. The Special Rapporteur has also received information from persons who were in one way or another involved in the attempted coup d'état of March 1990. Some of them are convicted prisoners or have appealed for pardon; others have taken refuge in foreign countries. Some of them have stated that

they had been ill-treated. The most common method of ill-treatment was to force a person to stand against a wall, in complete isolation; sleep deprivation and the use of strong electric lights during interrogation were also reported.

74. As indicated in the Special Rapporteur's interim report to the General Assembly, a new unified judicial system was established in March 1991 which nominally removes jurisdiction over cases concerning internal and external security as well as military matters from the influence of the political party. It is hoped that the new unified court and attorney system (A/46/606, paras. 71-72) and the establishment of a High Court of Appeal together with the system of providing legal aid will definitively eradicate the practice of torture. In addition, the First Deputy Minister for State Security has informed the Special Rapporteur that in the future there should be only two detention centres in Kabul for prisoners in detention on remand where interrogation would take place: Blocks 1 and 2 of Pol-i-Charkhi prison and the General Directorate for Investigation located in Sedarat. The Ministry of State Security has also indicated that it has 10 detention centres in the provinces, namely in Baghlan, Balkh, Farah, Ghazni, Herat, Kandahar, Kunduz, Nangarhar, Paktia and Parvan.

75. During his last mission the Special Rapporteur was informed by the Minister of the Interior, the Deputy Minister for Foreign Affairs and the President of the Republic that the International Committee of the Red Cross (ICRC) would be allowed to visit detention centres under the supervision of the Ministry for State Security, both in Kabul and in the provinces, and to interview detainees in accordance with the rules of the ICRC, i.e. without witnesses. The obstacle for carrying out such visits in the past used to be the mandatory presence of a representative of the Attorney General's office. This requirement now appears to have been removed. The readiness of the Afghan authorities to open these interrogation centres in Kabul and in the provinces has also been confirmed by the International Committee of the Red Cross. The law in this respect has not been changed but the former administrative practice has been abandoned. At the time of the finalization of the present report, the Special Rapporteur was informed that the International Committee of the Red Cross had been able to visit Blocks 1 and 2 at Pol-i-Charkhi prison and is currently carrying out similar visits in Farah province.

76. The Special Rapporteur has once again visited Pol-i-Charkhi prison which had 2,688 prisoners at the time of his visit. He was informed that between September and December 1991, 469 persons had been released through 86 individual and 2 general amnesty decrees. Out of the total, 55 were persons over 60 years of age, 40 had incurable illnesses and 26 were handicapped. An additional 100 political prisoners were pardoned by presidential decree on 27 December 1991 and are said to have been released. Since September 1991, 176 new inmates had arrived at the prison.

77. A new system of prisoner representation before the prison authorities has been introduced. Each wing may elect one representative to voice the grievances of the prisoners. At present there are 32 wings at Pol-i-Charkhi with 32 representatives. They present prisoners' complaints concerning their

daily life in prison. The Special Rapporteur selected five representatives from among the 32 wings including the one representing foreign prisoners. He was able to discuss their problems with them freely without the presence of prison authorities. The problems discussed were mainly related to prison conditions. Reference was made to insufficient blankets during the winter season, electric power cuts and occasional shortages of water in differnt wings, as well as to inappropriate medical facilities. Two prisoners claimed that they had been re-arrested on the same charges shortly after being released and were brought back to Pol-i-Charkhi. The Special Rapporteur promised to bring their cases to the attention of the authorities.

78. The Special Rapporteur was also able to meet two prisoners who had been sentenced to capital punishment. They informed him about the conditions of their custody and the ill-treatment they had undergone after their arrest.

79. The Special Rapporteur was informed by one of the inmates he was able to see in September 1991 that the inmates had not been subjected to any harassment after the visit. However, the prisoner stated that he was told that he would receive "special treatment" if he were to attempt again to forward a letter to the press about prison conditions without previously submitting it to the prison authorities for inspection. Such treatment meant being kept in a toilet for a certain period or the harassment of family members when they come to visit. Concerning this allegation, the Special Rapporteur would like to state that even under the system governed by the European Convention on Human Rights and Fundamental Freedoms, prison correspondence is subject to certain restrictions.

80. A Commission in charge of supervising the situation of prisoners has been established and is composed of high-ranking government officials who are familiar with the law and prison conditions (see annex VI). The Commission, whose rules of procedure have been regulated by presidential decree, is authorized, inter alia, to examine the situation of convicted prisoners, ensuring that investigations have been completed, as well as that of persons under judicial investigation. The Special Rapporteur was informed that the Commission had adopted as its guidelines the United Nations Standard Minimum Rules for the Treatment of Prisoners. Since its establishment members of the Commission have carried out five visits to Pol-i-Charkhi prison, two to other detention centres, two to women's prisons and two to the Juvenile Rehabilitation Centre. The Commission is also competent to deal with complaints. It has so far received 825 petitions, some of which concern requests to review sentences while others concern prison conditions. The latter complaints are largely similar to those voiced before the Special Rapporteur by the representatives of prison wings at Pol-i-Charkhi. A presidential order urges all governmental agencies to cooperate with this Commission. The Commission evaluated the conditions prevailing in Pol-i-Charkhi prison more positively than had the Special Rapporteur. Members of the Commission appealed to the Special Rapporteur to invite the international community to assist the Afghan Government in rebuilding the Dar-el-Tadib Juvenile Rehabilitation Centre. In view of the fact that the Special Rapporteur is acquainted with the deplorable state of the aforementioned premises, he responded favourably to this request.

81. An important issue concerning political prisoners under interrogation has to do with the length of detention on remand. The Special Rapporteur has discussed this matter with the Chief Justice and the President and members of the High Court of Appeal. The prolongation of this type of detention by investigative organs is no longer decided upon by the Ministry of State Security or the Attorney General's Office - which are under the authority of political bodies - but is now dealt with by courts. The Chief Justice and the President of the High Court of Appeal also informed the Special Rapporteur that detainees could raise the problem of ill-treatment at any time. As examples, they cited four cases in which allegations of ill-treatment during interrogation had been investigated and the interrogation officers prosecuted and punished accordingly. The Special Rapporteur subsequently received from the Afghan authorities a summarized account of the four cases.

82. The persons who were subjected to torture whose cases were submitted to the Special Rapporteur had been prosecuted in connection with bomb explosions and kidnapping. The case involving a member of the Muslim clergy did not specify the offence. The communication of the Afghan authorities stated that all the interrogation officers who had tortured the aforementioned persons were found guilty by the courts and were punished in accordance with article 42 of the Constitution as well as articles 78 of the Penal Code and 275 to 279 of the Penal Procedural Code.

83. The Afghan Government has authorized a demonstration organized by the supporters of former king Zaher Shah which took place in Kabul on 13 November 1991. It was the first of its kind since 1985. However, a counter-demonstration was organized on the same day by the opponents of the former king who are alleged to have attempted to disturb the first gathering. The Minister of the Interior informed the Special Rapporteur that the authorities did not intervene in either demonstration and that no one was arrested. He explained that since democracy and pluralism prevailed in the country the authorities felt that they should not interfere as there were no clashes and since this could be interpreted as favouring one of the parties. The Special Rapporteur is of the opinion that the right of peaceful assembly, as enshrined in article 50 of the Afghan Constitution and in article 21 of the International Covenant on Civil and Political Rights, also requires that the authorities protect a peaceful assembly whose organization has been authorized against those who try to prevent the exercise of the right to peaceful assembly.

84. The Special Rapporteur was informed that the Association of Afghan Lawyers had undertaken to establish and draft the charter and statutes of a commission on human rights of Afghanistan and a 31-member drafting committee has been set up to that effect. At the time of the Special Rapporteur's visit the relevant texts had not been agreed upon. It had also not yet been decided whether the Afghan Commission on Human Rights would be an independent non-governmental organization, a para-statal body or have functions similar to those of an ombudsman.

E. Economic, social and cultural rights

85. The enjoyment of economic, social and cultural rights in Afghanistan can only be viewed against the background of the prevailing situation of war.

Anyone who is acquainted with the country is aware that the disintegration of the Afghan society and the large number of refugees and displaced persons cannot contribute to an organized labour system. Trade has been hampered by the difficulties related to the safety of transport connections, especially land traffic, and tourism has ceased to be a source of income. The economic infrastructure concerning agriculture allows for the existence of only a very small domestic market. The only economic assistance in the areas not controlled by the Government is provided by non-governmental and intergovernmental organizations, but this is geared principally towards reconstruction rather than economic development. The situation in Government-controlled areas is better in that efforts to develop the economy are at least implemented in a systematic manner. The price lists of consumer goods in various parts of the country which are regularly published in the Monthly Bulletin of the Afghan Information Centre show a dramatic decline in the value of the Afghan currency. The issue of currency falls within the competence of the President, who, under article 75, paragraph 13, of the Constitution has the right "to authorize the issuance of money and monetary reform, in accordance with the law". An expert has correctly remarked that "the capacity of the economy to absorb currency while production is stagnant or dropping is not unlimited". Nevertheless, persons employed by the Government (according to some estimates, this may comprise up to 80 per cent of the population in Kabul) receive coupons for food and other basic commodities which enable them to acquire these staple goods for free or at fixed prices.

86. The information provided by the Afghan Government to the Committee on Economic, Social and Cultural Rights (E/1984/6/Add.12 and E/1990/5/Add.8) has been considered by the Committee as "unduly legalistic since it did not provide data on the practical implementation of the provisions of the Covenant or on the true situation in Afghanistan with regard to the enjoyment of the economic, social and cultural rights" (E/C.12/1991/CRP.1/Add.1, para. 38).

87. During his last visit to the country, the Special Rapporteur had the opportunity to discuss these matters with the Minister of Labour and Social Affairs who provided him with detailed information about the Labour Code, the equality of rights, the position of women, the situation of children and orphans and handicapped persons, the handling of social affairs and the efforts made to fight against production and use of narcotic substances. The Minister stated that there were 200,000 civil servants of whom around 70,000 were employed in the private informal sector.

88. In areas under the control of the Government, reality is thought to be in keeping with the laws to a considerable extent, which is not the case in areas controlled by the opposition, where a democratic, social, economic and administrative infrastructure appears to be lacking. This infrastructure is said to have been completely destroyed in Khost, Kunduz and Laghman.

F. Self-determination

89. Self-determination is the right of all peoples. The entire population of a State is entitled to enjoy this right. The exercise of the right to self-determination depends on the actual situation in which the people live.

For refugees, self-determination primarily means to be free in their determination to return to their homes. Territoral self-determination is not an issue to be decided by the Afghan people; self-determination in the Afghan context is the right to internal self-determination, to determine the political status of the people and to pursue economic, social and cultural development.

90. A primary condition for the exercise of the right to self-determination by the Afghan people so that the whole population may be and is considered as a "people" within the meaning of article 1 of the International Covenants on Human Rights, is the return of refugees to their homeland. This return depends mainly on the actual and not the legal conditions with regard to the situation prevailing in the country. This implies law and order, a functioning administration and the reconstruction of the country, or at least a move towards reconstruction. The will to initiate reconstruction would constitute an element of self-determination.

91. The free elections foreseen in the Afghan Constitution, in the various joint statements and communiqués and in the texts of United Nations human rights instruments are a further means of achieving self-determination and may constitute the ultimate expression of the will to exercise this right. It is therefore understandable that all the forces striving for a political solution of the Afghan conflict advocate the holding of free elections. From an international point of view, free elections could be equated to a political solution.

92. But how is this point to be reached when opinions are so divided? It seems, however, that a certain amount of progress towards free elections and self-determination was made in 1991. All parties to the conflict appear to agree that a precondition to self-determination ought to be a general gathering of the representatives of all segments of Afghan society. It is only at a gathering of this type that a decision may be reached that would signify a step in the direction of general elections. Such a gathering would be fruitful only if it were to not neglect the field of human rights: cessation of armed hostilities, the release of prisoners, no new arrests and incarcerations, no executions as a result of military, judicial or political action, as well as the formulation of a programme that would be conducive to the holding of general elections. The exercise of the right to self-determination is a difficult process, and should be approached step by step.

III. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

93. The universal respect for human rights in Afghanistan, which has been divided into different parts controlled by the Government, different opposition parties and field commanders, depends on a political solution of the conflict which has prevailed in the country since the withdrawal of Soviet troops in 1989. Only a political solution that would result in the creation of a generally accepted and recognized central authority would establish the necessary conditions for guaranteeing the most fundamental rights to the population throughout the country: the right to self-determination, the right to life and, consequently, the entire set of human rights which are enshrined in the Afghan Constitution as well as in international human rights instruments to which Afghanistan is a party.

94. The year 1991 marked important advances towards a political solution: the five-point peace plan presented by the Secretary-General on which all political groups and the Governments concerned have agreed in principle, the joint declarations of Islamabad and Tehran, the joint statement of the United States of America and the Union of Soviet Socialist Republics of 13 September 1991 concerning the simultaneous cut-off of arms deliveries to all Afghan parties by 1 January 1992 ("negative symmetry"), the joint statement issued by the Soviet Union, the Russian Federation and the Afghan mujahidin on 15 November 1991, the joint communiqué issued by the Russian Federation and Pakistan on 22 December 1991 and, finally, the resolution on Afghanistan adopted by the Organization of the Islamic Conference in December 1991.

95. Although none of these texts explicitly mentions the guarantee of human rights as a goal to be attained, all of them contain important human rights elements: the return of refugees, the exercise of the right to self-determination, the release of prisoners as an expression of the right to the liberty and security of the person. It may be argued that the advocates of a political solution are also implying that this solution would comprise the restoration of human rights.

96. However, the conditions for the restoration of human rights have not been fulfilled. The situation of more than 5 million Afghan refugees has remained unchanged despite the efforts made by the Governments of Pakistan and the Islamic Republic of Iran in cooperation with international organizations aimed at facilitating the return of refugees, and despite the efforts made by the Government of Afghanistan to reintegrate returnees into the society. (According to the Ministry for Repatriates Affairs, approximately 57,000 persons have returned since March 1991.) The instability in the country, the fighting between the opposition forces and those belonging to the Government, the fighting among the opposition groups, the use of heavy artillery and sophisticated weapon systems, the slow progress being made in de-mining and the lack of what they consider to be a genuinely Islamic Government are some of the reasons why refugees are not going back.

97. The armed conflict between the Afghan Government and opposition forces has continued throughout 1991. Khost, Jalalabad and Ghazni were the most

coveted cities which opposition forces have attacked with sophisticated weapons while the Government has defended its positions by occasionally retaliating in an indiscriminate manner. The destruction of military and civilian targets has occasioned heavy losses among the civilian population. Four hundred civilians are reported to have been killed in Jalalabad alone. The guns have remained silent in Afghanistan since 1 January 1992 when the "negative symmetry" agreement reached between the United States and the Soviet Union entered into force. The Special Rapporteur has been unable to ascertain whether negative symmetry has also been applied by other States in the region.

98. Terrorist attacks within the meaning of the Additional Protocol I to the Geneva Conventions have continued throughout 1991, resulting in the death of numerous civilians. The Special Rapporteur deplores the manner in which opposition forces have marked the anniversary of the entry of Soviet troops into Afghanistan: 17 persons were killed in rocket attacks on Kabul, Herat and Kandahar on 27 December 1991.

99. The continued fighting among opposition groups has also resulted in numerous casualties. There is growing unrest in areas not controlled by the Government and among the refugee population living in Pakistan. Numerous assassinations and abductions that have never been elucidated have also been reported.

100. The number of political prisoners in Afghanistan has remained stable, averaging approximately 2,500 persons. The fact that more than 20,000 persons are reported to have been released since the launching of the national reconciliation policy cannot disguise the fact that many persons have been imprisoned during the same period. For example, 469 prisoners have been released since September 1991. However, 176 persons have been incarcerated in the course of the same period. The Special Rapporteur has noted that the less conventional method of granting amnesties appears to be more conducive to the release of prisoners than new trials that would result in their acquittal.

101. The Afghan authorities have adopted a more liberal approach in their policy concerning capital punishment. In this connection, the President of the Republic responded favourably to the Special Rapporteur's appeal in conformity with General Assembly resolution 46/136 to commute the death sentences imposed on the persons who allegedly participated in the attempted coup d'état of March 1990. He subsequently issued a decree which entered into force on 15 January 1992 limiting the number of cases in which the death penalty may be applied. The death sentence of the persons who were allegedly involved in the attempted coup d'état has been commuted to 20 years' imprisonment. In addition, the Special Rapporteur was informed that the aforementioned decree applied to all persons who had been sentenced to capital punishment, which means that a total of 114 death sentences have been commuted.

102. The judicial system has been changed into a unified one whereby the notorious system of special courts has been abolished. However, chambers dealing with internal and external security as well as military issues continue to exist and have been incorporated into the system of ordinary courts. The system governing attorneys has also been modified. However, the Special Rapporteur has been unable to verify how this new judicial system functions and whether it guarantees a fair trial.

103. Detention on remand remains a critical stage with regard to personal liberty and security, especially with regard to the possibility for detainees to avail themselves of the services of freely chosen defence counsel throughout the period of interrogation. The newly established Commission for Legal Assistance can contribute to the improvement of the position of prisoners detained on remand. However, if the independence of lawyers is not guaranteed, the new system of providing legal assistance will continue to depend on the Government.

104. The duration of detention on remand continues to be unreasonably long. The process of interrogation still appears not to be devoid of ill-treatment: persons who have allegedly taken part in the attempted coup d'état reported to the Special Rapporteur that they had been deprived of sleep and were forced to stand against a wall in complete isolation. The Special Rapporteur welcomes the authorization given to the International Committee of the Red Cross to visit prisoners detained by the Ministry of State Security. The Special Rapporteur was informed by the same Ministry that the detention centres in Kabul where interrogations may take place have now been limited to two.

105. On the other hand, it is difficult to gain access to prisoners held by opposition forces. It would appear that prisoners of war who are high-ranking officers are treated in conformity with the Third Geneva Convention. The Special Rapporteur was unable to find out how low-ranking soldiers were treated. The Special Rapporteur was informed that persons belonging to the Secret Police were separated from the other prisoners. At present, the International Committee of the Red Cross does not have systematic access to prisoners held by opposition forces. In addition, the fate of Soviet prisoners of war, which represents a particular international concern, has not been elucidated.

106. Prisoners are often used as hostages in political bargaining. Decisions concerning the prisoners to be exchanged and the time of the exchange are made in a rather arbitrary manner. It would appear that age and state of health are among the criteria for release taken into account by the Government. A United States citizen who had been abducted by opposition forces was recently released after a long period.

107. The Government has tried to improve the living conditions of convicted prisoners. The Special Rapporteur welcomes the establishment of the Commission in charge of supervising the situation of prisoners within the framework of the Office of the Chief Justice whose task is the constant supervision of prison conditions. Nevertheless, shortcomings such as inadequate food, power cuts, lack of running water, heating and insufficient blankets during the winter period were brought to the attention of the Special Rapporteur.

108. The premises of the Juvenile Rehabilitation Centre (Dar-el-Tadib) are in urgent need of complete renovation or rebuilding.

109. The enjoyment of other civil and political rights depends on the prevailing situation of war and unrest and the efforts of the Government to maintain law and order in the country. It would appear that the attempted coup d'état has resulted in the silencing of a considerable portion of the

Khalq faction of the Watan party (formerly the People's Democratic Party of Afghanistan). The citizenship of the former King Zaher Shah and 23 members of the royal family has been restored. Authorities have reportedly not intervened in a demonstration in favour of the former King organized by his supporters. However, they have allegedly also not intervened in demonstrations organized by the former King's opponents who are said to have attacked his supporters.

110. The effective enjoyment of economic, social and cultural rights is particularly difficult during the winter season. The United States has provided assistance in the amount of US$ 80 million for reconstruction and food distribution in those areas not controlled by the Government where a certain administrative structure exists. Purchases of food from the former Soviet Union are paid for in convertible currency. Afghan and Indian traders have received authorization from the competent Afghan authorities to import fuel, sugar and wheat from India and the former Central Asian Republics of the Soviet Union. The rate of inflation is controlled by the President who is empowered to decide monetary policy. The hundreds of thousands of persons employed by the Government receive salaries and their basic needs are provided for.

111. As indicated by the United Nations Committee on Economic, Social and Cultural Rights, however well formulated the legal provisions concerning economic, social and cultural rights may be, particularly with regard to women and children, they are not reflected in the reality prevailing on the whole of the country's territory. Afghan laws are respected only in areas controlled by the Government.

112. The exercise of the right to self-determination is thwarted by the increased fragmentation of the Afghan population. The different segments of Afghan society which live inside and outside the country view the exercise of the right to self-determination in a different manner and have different goals in this connection. The aim of the refugees is to return home when the conditions for doing so are appropriate. The goal of the opposition is to acquire complete power. The goal of the Government is to remain in power and to maintain law and order in the country. The goal of the United Nations is to foster the implementation the Secretary-General's five-point peace plan. These aspirations can only be achieved through a negotiated political settlement which requires the understanding and agreement of all segments of the Afghan population involved in the conflict and would be conducive to a cessation of armed hostilities. Self-determination must be achieved through a political solution which shall serve as a basis for all further action.

113. The Special Rapporteur is grateful to the Governments of Afghanistan and Pakistan for their full cooperation in assisting him to obtain the best possible insight into the situation.

B. Recommendations

114. As a political solution of the conflict is the only way to bring about peace and the full restoration of human rights in Afghanistan, the Special Rapporteur urges the international community to support, unconditionally and unequivocally, all ways and means conducive to a political solution.

115. Only a political solution can result in the realization of the right to self-determination by the fragmented Afghan population. However, a political solution requires that not only the political reality - protracted war in the country with a rapid shifting of alliances - be taken into account; it also requires the incorporation of human rights elements in this solution, namely:

(a) To create the conditions for the refugees to exercise their free will to return. These conditions are to be created by all the respective authorities, with the assistance of international organizations;

(b) The United Nations should call for the active participation, both direct and indirect, of all Member States in the de-mining process for which Afghan and Soviet mine plans should be used. Joint commissions should be created for that purpose as soon as possible;

(c) Political prisoners on all sides should be released unconditionally;

(d) All prisoners of war should be released unconditionally;

(e) Lists of all prisoners should be exchanged and their relatives should receive information through the International Committee of the Red Cross;

(f) All organized hostilities should cease. Discussions and conferences whose aim is to arrive at peace and security should be organized.

116. Regardless of when a political solution is arrived at, the following human rights measures should be envisaged:

(a) The immediate release of all former Soviet prisoners, in view of the fact that the hostilities in which the former Soviet Union was involved have legally and effectively ended. Article 118 of the Third Geneva Convention should be respected;

(b) All death sentences should be commuted and the death penalty should be abolished. The presidential decree concerning the limitation of the application of the death sentence may be considered only as the first positive step in the right direction;

(c) The competent authorities should investigate all allegations of ill-treatment of prisoners;

(d) Opposition groups should also respect the Standard Minimum Rules for the Treatment of Prisoners;

(e) The Special Rapporteur and the International Committee of the Red Cross should be allowed to visit prisoners held by opposition forces;

(f) Afghanistan should be invited to adhere to the Optional Protocol to the International Covenant on Civil and Political Rights and encouraged to apply to individual cases the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination;

(g) Effective legal steps should be taken in order to allow for the establishment of a bar association and lawyers should receive training that would enable them to defend accused persons at all stages of their prosecution.

117. Efforts aimed at elucidating the fate of the thousands of disappeared persons should not cease.

118. The international community should be called upon to contribute more effectively to the de-mining process and the rebuilding of the country's infrastructure.

119. The Special Rapporteur expresses his readiness to monitor the release of all prisoners on both sides.

120. The situation of human rights in Afghanistan should continue to be examined until a political solution is found. It is only then that the system of reporting by the Special Rapporteur could be replaced by advisory services.

Annex I

JOINT STATEMENT BY THE SOVIET UNION, THE RUSSIAN FEDERATION AND THE AFGHAN MUJAHIDIN

On the invitation of the Soviet Union and Russian Federation, Afghan Mujahidin delegation headed by Prof. Burhanuddin Rabbani, Minister of Foreign Affairs, visited Moscow from 11-15 November 1991. This was the first official visit of Afghan Mujahidin delegation to the USSR.

During the stay, Prof. Rabbani met with the Vice-President of RSFSR Alexandre Rotskoi. In the course of discussion, fruitful talks were held on the issues of political settlement in Afghanistan, problems of the Soviet POWs and Mujahidin POWs held by Kabul regime.

Professor Rabbani and his delegation also met with the former Soviet Foreign Minister, Edward Shevardnadze, now member of political consultative council of the Soviet President.

The Mujahidin delegation held official talks with the Soviet Foreign Minister Boris Pankin, Russian Foreign Minister Andrei Kozyrev, Foreign Minister of Tadjikstan H. Qayyumov, Deputy Foreign Minister of the USSR, RSFSR and Representatives of different Republics.

The delegation also had a detailed and fruitful meeting with the relatives of the Soviet POWs.

During the meeting and discussions which were held in an open and healthy atmosphere both sides were able to explain their positions.

1. The Soviet invasion of Afghanistan and its participation in the war, which brought and is bringing unlimited sufferings to the Muslim people of Afghanistan, was condemned and acknowledged as anti-constitutional acts.

2. Both sides have acknowledged the need for transfer of total state power to an Interim Islamic government in Afghanistan.

3. The Mujahidin delegation announcement that General Elections will be held in Afghanistan within a period of two years from the moment of transfer of power from Kabul regime to the Interim government. These elections will be held under the aegis of the OIC and UNO.

4. The decision about the effectiveness of all agreements signed after 1978 between the USSR and Soviet-backed Kabul Governments will be adopted by the Interim government.

5. Both sides agreed to make all possible efforts for release of the POWs. Out of their efforts for peace, Mujahidin will take measures for release of First Group of the Soviet POW before 1 January 1992. The necessary practical measures to be taken for implementation of such a decision will be carried out by a Joint Commission.

6. The Soviet side have agreed to stop all supply of Arms, Ammunition, fuel for military means and take necessary steps for their radical reduction, followed by a complete withdrawal of Soviet Army Personal from Afghanistan.

7. The Soviet Union will take necessary part in common efforts for the rehabilitation of destruction caused by the war.

8. A Joint Body will be established within a period of one month for the implementation of positions mentioned in this statement and carrying our future negotiations.

Annex II

JOINT COMMUNIQUE ISSUED BY THE GOVERNMENTS OF THE ISLAMIC REPUBLIC OF PAKISTAN AND THE RUSSIAN FEDERATION

22 December 1991

At the invitation of the Government of the Islamic Republic of Pakistan, a delegation of the Russian Federation led by Vice-President of the Russian Federation His Excellency Mr. Alexander V. Rutskoi paid a working visit to Pakistan from 19 to 22 December 1991. The visit marked the first official contact in the history of Russian-Pakistan relations.

During the visit, the delegation of the Russian Federation visited Islamabad and Lahore. Meetings and talks were held between Vice-President of the Russian Federation His Excellency Mr. A. V. Rutskoi, and President of the Islamic Republic of Pakistan, His Excellency Ghulam Ishaq Khan, the Prime Minister, His Excellency Mian Mohammad Nawaz Sharif, Senate Chairman, His Excellency Mr. Wasim Sajjad and the Secretary General of the Ministry of Foreign Affairs, His Excellency Mr. Akram Zaki. The exchanges were held in a warm, cordial and friendly atmosphere.

In the course of the meetings and talks, both sides held wide-ranging discussions on matters of mutual interest and the establishment and development of bilateral relations between Pakistan and the Russian Federation in the sphere of economy, trade, science and technology, culture and other fields. They reviewed the international situation, and, in particular, the conditions prevailing in the South Asian region. The Pakistani side expressed deep appreciation for the policy of the Russian Government, as stated by Vice-President of the Russian Federation, His Excellency Mr. A. V. Rutskoi, to develop relations with Muslim states on new principles, devoid of ideological obstacles and based on mutual respect, goodwill and mutual benefit.

The two sides expressed happiness over the establishment of diplomatic relations between the Islamic Republic of Pakistan and the Russian Federation. The two sides agreed to set up a joint commission to reaffirm and review the existing agreements and to work out new agreements. For this purpose, a draft agreement was discussed for cooperation in the political, economic, commercial, scientific, technical and cultural fields.

Mutual understanding was achieved that there existed good prospects for initiating mutually beneficial cooperation in the field of economy and trade, in particular, in the establishment of joint ventures to produce consumer goods including foodstuffs, in the field of energy, oil and gas extraction, construction of industrial and other projects. It was stated that the substantial scientific and technological potential of both countries and their rich cultural traditions created favourable opportunities for extensive exchanges in the fields of science and technology, education and culture.

The two sides agreed to conduct, on a regular basis, exchanges of delegations to discuss issues and enhance cooperation in the economic, trade, scientific, technological, and cultural fields as well as in the field of education and tourism on a commercial basis.

The two sides agreed to have regular contacts between the Russian and Pakistan parliaments. The deputies of the Russian parliament, members of the delegation, invited a delegation of Pakistani parliamentarians to visit Russia.

Agreement was also achieved with regard to contacts between their respective foreign policy and defence establishments by way of exchange of delegations and periodical consultations aimed at strengthening peace and stability in Asia and in the world at large.

Both sides called for the establishment of a nuclear-weapon-free zone in South Asia. In this context, appreciating the initiative by Pakistan, Vice-President, His Excellency Mr. A. V. Rutskoi, positively evaluated the proposal for a five nations' conference on nuclear non-proliferation in the region.

On Afghanistan, both sides reiterated their firm commitment to a speedy political settlement of the problem, and resolved to cooperate with each other for the promotion of this objective. The Vice-President of the Russian Federation, Mr. A. V. Rutskoi, declared that Russia intended to facilitate a peaceful political settlement in Afghanistan.

Both sides, consistent with the consensus resolutions adopted by the United Nations General Assembly, and with their commitment to the Geneva Accords on Afghanistan, recognized the fundamental right of the Afghan people to determine their destiny free from outside interference. They fully endorsed the initiative of the United Nations Secretary-General of 21 May 1991. Both sides welcomed the declaration adopted at the conclusion of the visit of the Afghan Mujahidin delegation to Moscow from 11 to 15 November 1991. They reaffirmed the need for a solution that ensured an independent, non-aligned and Islamic Afghanistan, at peace with its neighbours.

Recognizing the inadmissibility of using prisoners of war for political purposes, the two sides resolved to make every effort that all POWs in Afghanistan would be freed in the near future on the basis of humanitarian considerations. In this connection, Vice-President, His Excellency Mr. A. V. Rutskoi expressed his deep appreciation to the Government of Pakistan for its efforts in obtaining the release of Soviet prisoners, who had been held in the custody of the Afghan Mujahidin groups.

The two sides emphasized the need for the early voluntary return of the five million Afghan refugees living in Pakistan and Iran to their homeland in safety and honour.

The Pakistan side informed the Russian side about the deteriorating human rights conditions in Kashmir and about Pakistan's principled position on the Jammu and Kashmir dispute. The Russian side acknowledged Pakistan's position and expressed the hope that the issue would be resolved peacefully through negotiations between Pakistan and India on the basis of international agreements.

Regarding the Middle East, both sides welcomed the current peace negotiations and called for a solution in accordance with United Nations Security Council resolutions 242 and 338 and for the respect of the inalienable national rights of the Palestinian people.

Vice-President, His Excellency Mr. A. V. Rutskoi expressed thanks for the invitation extended by His Excellency Prime Minister Mohammad Nawaz Sharif to the President of the Russian Federation, His Excellency Mr. Boris N. Yeltsin and, on behalf of the President of the Russian Federation, extended invitations to His Excellency President Ghulam Ishaq Khan and His Excellency Prime Minister Mohammad Nawaz Sharif to pay official visits to the Russian Federation. The invitations were gratefully accepted and the visits would take place at mutually convenient dates.

22 Decenber 1991
Islamabad

Annex III

FLYER POSTED AROUND HAYATTABAD, KABIBIAN AND OTHER PLACES IN PESHAWAR, DATED 26 OR 27 NOVEMBER 1991

(Translation from Afghan Dari)

Young Mujahid Guerrillas of Afghanistan

To all Muslim refugees and to all those who left their country to defend the honour of their women. From what we see and know, the refugee community's Islamic character and values have taken the wrong path and we don't like this. Young girls and Afghan women walk and go freely in the streets, bazaars and to foreign organizations and they talk to foreign Jews, Nazarenes (Christians) and Magi but Islam has prohibited all such activities and declares people who indulge in such activities to be criminal and infidel. When those aforementioned people (Jews, etc.) are in contact with Muslims they bring bad luck and lead people into bad character and the wrong path. We have to stop these things and to prevent this we are going to tell all Afghans about this so it doesn't get worse. If this is not stopped, the responsible sources have the duty to stop this; they need to start quickly to stop those people who are working against the Sharia. To correct this kind of prostitution, the mujahidin will have to generally start operations. Because all of you are Muslims and have fled to defend your religion and women and to stop communism and for those reasons you have become refugees, your women shouldn't be dishonoured with contact with Jews and godless foreigners. Those who continue with all these improper contacts will just be waiting for violent results. The responsibility is on them and their improper families. To repeat the main points so that everybody understands:

1. After this, no woman or young girl should be with foreigners or work in non-Islamic organizations and even go to these places;

2. If actions are repeated, the men of the family - fathers, uncles, brothers, etc. those directly responsible for the family - will get the punishment if they don't obey this;

3. If you have problems, talk to the jihad sources and they will assist you.

This is the final request - correct your habits, otherwise, according to the Islamic code, we will resolve it.

Group of the Young Afghan Guerrilla Mujahids.

Annex IV

LIST OF PRISONS AND PRISONERS IN THE CENTRE AND IN THE PROVINCES
(Provided by the Ministry of the Interior)

No.	Name of prison	Criminal cases			Political cases			Grand Total
		Male	Female	Total	Male	Female	Total	
1	Central Jail	793	36	829	1 898	1	1 899	2 728
2	Helmand	37	3	40	34	0	34	74
3	Balkh	356	14	370	409	1	410	780
4	Nangarhar	135	17	152	140	0	140	292
5	Badghis	2	0	2	6	0	6	8
6	Jozjan	104	11	115	64	0	64	179
7	Farah	16	0	16	42	0	42	58
8	Samangan	12	0	12	5	0	5	17
9	Baghlan	47	4	51	18	0	18	66
10	Kunduz	56	3	59	72	1	73	132
11	Badakhshan	4	1	5	14	0	14	19
12	Paktia	33	0	33	6	0	6	39
13	Parvan	21	1	22	1	0	1	23
14	Herat	76	0	76	132	0	132	208
15	Faryab	22	0	22	16	0	16	38
16	Kandahar	0	0	0	0	0	0	0
17	Nimrouz	8	3	11	0	0	0	11
18	Ghazni	8	0	8	0	0	0	8
19	Ghourat	2	0	2	0	0	0	2
20	Total	1 732	93	1 825	2 837	3	2 860	4 685

Annex V

COMMUNICATIONS ISSUED BY THE GENERAL DIRECTORATE FOR INVESTIGATION OF THE MINISTRY OF STATE SECURITY OF AFGHANISTAN

A. Communication dated 8/10/1370 (29 December 1991) concerning the number of charged prisoners and condemned prisoners in two detention houses under the supervision of the Ministry of State Security in the Central Province

The Ministry of State Security has, in Kabul, two centres of detention for prisoners arrested for crimes against the internal and external security of the State:

1. The detention house of the General Directorate for Investigation;

2. Blocks 1 and 2 in the Pol-i-Charkhi jail.

The total number of prisoners in these two centres is at present 436. This total comprises both prisoners charged with crimes against the security of the State and prisoners condemned for such crimes.

In the General Directorate detention house there are 78 persons, 40 of whom are under investigation and 27 of whom have already been tried and are awaiting the sentence of the court. Eleven of these prisoners have been tried by the preliminary court and are awaiting the decision of the court of appeal. There are five foreign prisoners amongst these 78. Four are Pakistanis and one is an Iraqi citizen.

In blocks 1 and 2 of Pol-i-Charkhi there are 358 prisoners. Block 1 contains 101 prisoners, 4 of whom are condemned and 97 who are awaiting the decision of the court. In block 2 there are 257 prisoners, of whom 112 have been tried by the preliminary court but are awaiting the decision of the court of appeal, and 145 are awaiting the decision of the court. There are 16 foreign prisoners: 10 Pakistanis; 5 Iranians; and 1 Egyptian. There are also 20 prisoners who are employees of the Ministry for State Security and who are under investigation by the attorney of the Ministry.

B. Communication dated 17/9/70 (8 December 1991) concerning prisoners under the supervision of the branches of the Ministry of State Security in the provinces

There is a total of 10 detention centres belonging to the organs of the Ministry of State Security in the provinces. A total of 270 prisoners are in those centres. The breakdown by prison is as follows:

1.	Parvan	3 persons
2.	Herat	80 persons (from Farah, Nimroz and Herat, who are awaiting trial)
3.	Kandahar	12 persons

4.	Ghazni	2 persons
5.	Paktia	8 persons
6.	Nangarhar	8 persons
7.	Balkh	128 persons (from Balkh, Jowzjan, Faryab and Samangan)
8.	Kunduz	27 persons
9.	Baghlan	2 persons
10.	Farah	--

C. Communication concerning conditions in the detention houses belonging to the Ministry of State Security in the Centre and in the provinces

There are two detention centres under the supervision of the Ministry of State Security in the central province:

1. The detention centre of the General Directorate for Investigation;

2. The detention centre in Pol-i-Charkhi.

There is a total of 436 prisoners in these two detention centres who have been arrested for crimes against the internal and external security of the State.

There are 10 detention centres in the provinces:

1. Herat;
2. Farah;
3. Ghazni;
4. Kunduz;
5. Baghlan;
6. Balkh;
7. Parvan;
8. Paktia;
9. Nangarhar.
10. Kandahar

In the provinces there is a total of 270 prisoners arrested for crimes against the internal and external security of the State.

The National Reconciliation Process has, as one of its main objectives, to reinforce legitimacy and the rule of law in the country. It also aims to

reinforce the application of international standards of the Universal Declaration of Human Rights. In the light of the National Reconciliation Process, amendments and supplementary provisions have been introduced in all the laws of the country pertaining to the jails and detention centres. One can be assured today that legal and judicial order reigns in the prisons and detention centres and that the laws and standards accepted in all prisons are strictly respected and applied in our jails and detention centres.

The treatment of prisoners, whether convicted or not, is humane and in conformity with Islamic principles. During family visits, prisoners are able to reassure their families of their health. Visits are carried out according to the prison rules.

During the years of the National Reconciliation Process, representatives of the esteemed International Committee of the Red Cross (ICRC), representatives of other international organs and His Excellency, Professor F. Ermacora, Special Rapporteur of the Commission on Human Rights of the United Nations, have been able to visit the detention centres under the supervision of the Ministry of State Security and meet the prisoners in these centres.

Lately, upon a request of the International Committee of the Red Cross and as another gesture of good faith, the President of the Republic, His Excellency Dr. Najibullah, sent directives to the authorities to allow representatives of ICRC to visit the prisoners (both accused and condemned) in the detention centres under the supervision of the Ministry of State Security, under conditions set by ICRC itself, namely, free and private visits to any of the prisoners, at their own choice; access to all places of detention; repetition of visits, etc.

The organs of the Ministry of State Security hope that these visits will also permit ICRC to come forward with constructive and reasonable opinions and proposals which will, in turn, help the authorities in the Ministry to improve the situation.

Annex VI

RULES OF PROCEDURE OF THE COMMISSION IN CHARGE OF SUPERVISING THE SITUATION OF PRISONERS, AND THE REFORM OF PRISONS, IN THE COUNTRY

Chapter I. General Considerations

Article 1

These rules of procedure are enacted as a result of article 4 of order No. 119, dated 20/4/70 (11 July 1991), of the President, to examine the situation of prisoners and all persons who are kept in places where they are deprived of their freedom, such as prisons, detention places, places of custody and juvenile houses. These rules have been elaborated taking into account the Islamic Sharia, the provisions of the Constitution of Afghanistan, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the law on the application of prison sentences in the prisons and the regulations on the supervision of accused persons in detention centres.

Article 2

The term "Commission" in these rules of procedure refers to the Commission in charge of the supervision of the situation of prisoners and of the reform of prisons.

Article 3

The following are the bases of the activities of the Commission:

1. To supervise the situation of an accused person who is under interrogation, during the process of investigation;

2. To ensure that the process of investigation of the accused person has been completed;

3. To supervise the respect of the rights of the accused person during judicial investigation;

4. To oversee the health care, education and material needs of prisoners and persons in detention;

5. To supervise the organization of useful social activities for the prisoners.

6. To supervise the respect of the legal rights and privileges of prisoners and of those who have been arrested;

7. To look into the problems of prisoners and persons in detention.

Chapter II. The role and competence of the Central Commission in the provinces

Article 4

The Central Commission has the following responsibilites in the provinces:

1. To visit prisons, places of detention, places of supervision/custody and juvenile centres;

2. To enforce the legal requirement that no person is arrested, detained or put in prison without an order emanating from a legal competent authority;

3. To prevent the detention of prisoners and arrested persons in unauthorized premises;

4. To make sure that no person is arrested, detained or jailed for longer than the period of time determined;

5. To look into the complaints of prisoners and persons arrested or under supervision or detained;

6. To guarantee the right of defence of persons accused or under suspicion so that no illegal interrogation or investigation takes place;

7. To present the accused or suspect to the "legal aid" institution;

8. To supervise the right of prisoners to receive visits;

9. To look into the material needs of the prisoners and arrested persons;

10. To supervise the working conditions of the prisoners;

11. To look into the material needs of the prisoners and arrested persons;

12. To look into the health care of the prisoners and to inform the competent authorities of cases of incurable diseases or mental disorders and other illnesses;

13. To look into the application of laws and regulations pertaining to jails and detention centres;

14. To take measures to ensure the training of prisoners and persons in detention;

15. To take measures for the education and re-education of prisoners through the creation of libraries, courses, production projects and professional training projects, and to present proposals in this respect to the competent authorities;

16. To take measures to transfer as soon as possible arrested persons to the organs of investigation and trial, in agreement with the competent organs.

Article 5

The Central Commission shall report its activities and those of the provincial commissions to the legal office of the President every three months.

Each provincial commission will present a report on its activities every three months to the Central Commission.

Chapter III. Procedures and activities

Article 6

The Commission shall meet once every month and adopt decisions on matters on its agenda.

Article 7

1. The sittings shall take place at the premises of the High Court. The quorum is reached when two thirds of the members are present.

2. The decisions are taken by the majority of votes.

Article 8

The secretary of the Commission is appointed by the chairman of the Commission.

Article 9

1. In order to facilitate its work, the Commission can appoint working groups from among its members.

2. Working groups shall be composed of at least three members.

Article 10

The responsible committees shall visit prisons, detention centres, arrest centres and juvenile centres every fortnight and shall present reports to the Commission.

Article 11

Visits to the central jail shall take place in the presence of the chairman and the members of the Commission.

Article 12

The chairman of the Commission shall participate once every month in the work of the committees that visit the prisons, detention centres and juvenile centres.

Chapter IV

Article 13

The authorities supervising the places of detention are bound to apply the decisions of the Commission in the framework of the laws.

If the Central Commission considers that there have been violations of the law committed by the authorities, it will take one of the following measures:

(a) Present the violators before the competent disciplinary authorities;

(b) Propose the dismissal of the violator from his job;

(c) Present the violator before the Chief Prosecutor (in criminal cases).

Article 14

The Prosecutor's office shall present its own quarterly report on the situation of prisons to the Commission.

Article 15

The Ministries of State Security, Interior and Justice shall take all the necessary steps to facilitate the visits and the supervisory work or the Commission in prisons and places of detention.

Article 16

The Ministries of Interior and State Security shall provide the means of transport for the members of the Commission to the prisons.

Article 17

In cases of emergency, ad hoc visits of the Commission and the Committees shall be organized.

Article 18

All organs are called upon to apply the legal decisions of the Commission.

Article 19

The Commission has the right to call upon experts for advice.

Article 20

These rules of procedure shall be applicable after approval by the Chief Justice.

- - - - -